

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30096 of 2013

Arising Out of PS. Case No.-817 Year-2010 Thana- PATNA COMPLAINT CASE District-
Patna

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Anil Kumar Sharma S/O Sri Madan Mohan Sharma R/O 206, Heera Enclave
New Dak Bungalow, Road, P.S- Gandhi Maidan.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Dr. Kumar Sharat Chandra S/O Late Brijnandan G/3, Giriraj Apartment,
Vivekanand Path, P.S- Patliputra, District- Patna. Presently Residing at
Mantri Awas, Balika Vidyapith, Shakti Uthan Ashram, P.S.-Lakhisarai,
District-Lakhisarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Sarvesh Kumar Singh, Advocate
For the State	:	Mr.Uday Chandra Prasad, APP
For the Opp. Party No.2	:	None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date : 10-09-2020

Opposite party No.2-Dr. Kumar Sharat Chandra filed
complaint case No.817(C) of 2010 in the court of learned C.J.M.,
Patna against the petitioner and three others alleging offences
under Sections 406,409,420,463,467,468,471 and 120(B) of the
Indian Penal Code committed by the named accused from June
2008 till filing of complaint petition, at Patna as well as at
Lakhisarai.

2. The learned Magistrate before whom the case was
transferred under Section 192(2) Cr.P.C. enquired the matter under
Section 202 Cr.P.C. and summoned the petitioner to face trial for
offences under Sections 420 and 468 I.P.C. only which is under



challenge in this application under Section 482 Cr.P.C. By the same order dated 11.05.2011, the learned court below did not find any case against other three accused or for other alleged offences.

3. The challenge is on the ground that no case is made out on bare perusal of the complaint petition and the material available on the record for offence under Section 420 or 468 I.P.C. The criminal prosecution has been initiated to wreak vengeance due to dispute arising between the parties for management/mismanagement of the society in question.

4. According to complaint petition, the complainant claims to be honorary “Mantri” (Secretary) of Balika Vidyapith, Shakti Uthan Ashram, Lakhisarai since last 30 years. The society was already a registered society under the Society Registration Act since 1956. The society was established to educate the female community for which 100 acres of land was donated by different persons.

In 2008, the petitioner contacted the complainant at Lakhisarai and disclosed that he is engaged in the business of building construction at different places of the country. The petitioner further expressed desire for social service and also expressed to invest money for establishment of higher education at Lakhisarai. Thereafter, in November, 2008, a meeting took place at



Heera Enclave, New Dak Bungalow Road, Patna where the petitioner expressed his desire to invest 5 to 10 crores rupees for technical education. In the 67th meeting of “Nidhi Palak Mandal”, the Governing Body of the aforesaid Society, held on 18.12.2008, the petitioner and his three associates were inducted as nominated members of “Nidhi Palak Mandal” raising total Nos. of members to Fifteen. Allegation is that the petitioner had dishonest intention to grab the property of the society, as such, without permission of the “Nidhi Palak Mandal”, petitioner decided to establish “Amrapali Institute of Technology” an Engineering College and applied for recognition to All India Council for Technical Education. The petitioner applied showing himself as “Mantri” of the Society. On 21st July, 2009, an advertisement was published in the daily newspaper stating therein that Amrapali Institute of Technology has already received recognition from the Government of India, Human Resources Department and the Institute is affiliated to Tilka Manghi University, Bhagalpur. The complainant at once called for the prospectus of the Institute and found that the students willing to get admission in the Institute were being cheated. The complainant further stated that the petitioner was not holding any post, rather just to reduce the pressure of work of Mantri, was appointed as Chief Administrator. On 12.05.2009, the



petitioner was present in the meeting of “Nidhi Palak Mandal” but the petitioner did not inform the complainant that he has sent a letter for recognition and affiliation in the name of Amrapali Institute of Technology. Further allegation is that the portion of land on which the Institute was to be built up was to be identified by the “Nidhi Palak Mandal” which was not done at all. Allegation is that the petitioner further cheated in the sense that the Engineering College was to be established only for girl students but the petitioner played fraud and allowed the boys also to get admission.

Other accused against whom no summoning order was issued were alleged to have conspired with the petitioner.

5. Learned counsel for the petitioner submits that the petitioner has stated on oath that the old school building wherein Balika Vidyapith, Shakti Uthan Ashram was running was already dilapidated one. In the year 2002 itself i.e. before induction of the petitioner in the management of the Society, the boys were also permitted to get education in that school as the School was handed over to D.A.V. Society. Just to establish the glory of the school, the petitioner and others were inducted in the Management Committee known as “Nidhi Palak Mandal”. Learned counsel for the petitioner further submits that the complainant has admitted in



his statement on oath and the complaint petition also reveals that the petitioner was inducted as member of “Nidhi Palak Mandal” alongwith others in 67th meeting of “Nidhi Palak Mandal” dated 18.12.2008 when complainant was also present. A copy of the resolution, available with the record, would indicate that besides induction of the petitioner and others as member of the said Governing Body, it is specifically mentioned that for health reason, the complainant is relinquishing his post of Mantri and it was also decided that the petitioner would act as Chief Administrator to reduce the work load of Mantri. The petitioner was also authorized to decide the administrative and financial requirement and the same shall be implemented only after consideration by and approval of “Nidhi Palak Mandal”. In the same meeting, a proposal for establishment of Engineering College and College of Management besides a college for teacher training and a women’s college was also approved by the Governing Body. In the 68th meeting dated 12.05.2009 of the “Nidhi Palak Mandal”, it was unanimously resolved that the Chief Administrator, after consultation with the Mantri, shall perform the same responsibility which the “Mantri” was performing hence before.



6. Contention is that the petitioner had applied for affiliation after the above resolution and the Team of All India Council for Technical Education(hereinafter referred to as AICTE) conducted spot inspection in presence of the complainant regarding feasibility of establishment and infrastructure for establishment in the premise of the Society at Lakhisarai. The petitioner had applied in the capacity of Chief Administrator and no signature of anyone was forged. According to learned counsel when everything was going on smoothly, all of a sudden, differences arose amongst members of the Nidhi Palak Mandal and 04 members convened 69th meeting on 12.08.2009 at the residence of Smt. Renu Devi, the then Hon'ble Minister, Govt. of Bihar wherein the complainant also participated and another meeting was held in the campus of the school at Lakhisarai on the same date i.e. 12.08.2009 vide meeting No.69, wherein the petitioner and other 9 members participated. Conflicting resolutions were taken by the two Committees against the complainant as well as the petitioner.

7. On the basis of aforesaid material, learned counsel for the petitioner contends that no case of cheating as defined under Section 415 I.P.C. is made out nor any case of forgery including making of a false document is there. Hence, evidently



none of the offences for which cognizance has been taken are made out.

8. Though opposite party No.2 has filed a counter affidavit refuting and disputing the claim of the petitioner, however, no one appeared for opposite party No.2 at the time of hearing of this application.

9. Learned counsel for the State-opposite party candidly submits that at the stage of cognizance, meticulous appreciation of evidence is not permissible and once the learned Magistrate has applied its mind, this Court should not exercise jurisdiction under Section 482 Cr.P.C. to throttle the complaint at the threshold.

10. Section 415 of the Indian Penal Code defines the term cheating as follows:

“415. Cheating.—*Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that*



person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

11. Allegation is that the petitioner attempted to grab the property of the Society. The allegation is balled one as there is no material to suggest that the petitioner ever attempted to transfer the property of the Society in his own name or in the name of anyone else rather the action of the petitioner suggests that he was going to invest money for building different colleges including an engineering college in the premise of the Society which would be of the Society forever. It further reveals that whatever the petitioner did was only after approval of the Governing Body known as “Nidhi Palak Mandal”. Therefore, in my view, the most important ingredient to prove the charge of cheating i.e. delivery of property to anyone else or act of deceiving to anyone is missing. Hence, cognizance under Section 420 I.P.C. is bad in law.

12. The allegation of forgery against the petitioner is that when the petitioner applied for recognition and affiliation of the Engineering College with AICTE and Tilka Manghi University, Bhagalpur respectively, the petitioner signed on the application as Administrator of the Society. The aforesaid act was



done by the petitioner only after the resolution of the Governing Body which authorized the petitioner to discharge the responsibility of “Mantri”. Even the petitioner would have used the word “Mantri” that was not an unauthorized one and certainly not an act of forgery or making of false document because the petitioner had not impersonated himself as “Mantri” rather claimed himself to be “Mantri” of the Society consistent with the resolution of the Governing Body. There is no material at all to substantiate that the petitioner had made any false document rather whatever document was signed by the petitioner was in his own capacity.

13. Assuming that there was some dispute amongst the members of the Governing Body which revealed from the fact that 5 members convened a separate meeting and the remaining 10 members convened a separate meeting of the Governing Body on the same day, it may give rise to a civil dispute and certainly not of a criminal prosecution. Hence, charge under Section 468 I.P.C. was also baseless.

14. Therefore, in my view, the criminal prosecution of the petitioner is an abuse of the process of the Court as no offence, for which the petitioner has been summoned to face trial, is made out on the allegation and admission of the complainant as stated above.



Hence, the impugned order is hereby quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	09.09.2020
Uploading Date	10.09.2020
Transmission Date	10.09.2020

