

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3435 of 2022

Arising Out of PS. Case No.-810 Year-2018 Thana- SHASTRINAGAR District- Patna

Prakash Mahato @ Prakash Kumar Mahto Son Of Prof. (Dr.) Ra Mahto
(Retd.) Resident Of 2111 Pranav Villa Behind Ioc Petrol Pump Ps Sri
Krishnapuri Boring Road District Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dr. Sudha Ojha Wife of Dr. Raghubir Prasad Ojha Resident of village- Braj
Kunj Apartment, Flat No.22, Anand Puri, Boring Road, Patna. Incharge
Principal JD Women's College, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate Ms. Kanupriya, Advocate Ms. Sushmita Sharma, Advocate Mr.Prachi Pallavi, Advocate
For the Opposite Party/s :		Mr.Ram Priya Sharan Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 22-08-2023 Heard learned counsel for the petitioner and learned
APP for the State.

2. This application has been filed for quashing of the
order dated 21.10.2021 passed by learned Addl. Chief Judicial
Magistrate-IV, Patna in connection with Shastrinagar P.S. Case
No. 810 of 2018 by which learned Magistrate has taken
cognizance against the petitioner for the offences under Sections
406, 420, 467 and 468 of the Indian Penal Code.

3. As per prosecution case, petitioner is director of
M/s Aditya Shelters Pvt Ltd, which conducts self-financed



vocational UG courses in the College, which is affiliated to Patliputra University. It has been stated that Patliputra University upon its constitution has been regulating the admission and has fixed the course fee of various courses including vocational UG courses. It is alleged that the University had fixed Rs. 15,000/- per year, as course fee for vocational U.G courses and Students were required to deposit Rs. 5000/- through Bank Draft to the Patliputra University and the remaining amount of Rs. 10,000/- was deposited in the ESCROW A/C No.32512392341, 32512350424 and 32512454060 in accordance with the course selected by them but it has been found that the petitioner has collected Rs. 35,500/- from the student as course fee. It is further alleged that the College sent letters to the bank to return the excess fee charged from the student but till date the direction of the university has not been obeyed.

4. It has been submitted by learned counsel for the petitioner that petitioner is the Director of Aditya Shelters Pvt Ltd (hereinafter referred to as the "Company"), which is a private company. The company had entered into an agreement with JD Women's College, Patna and Magadh University for running the Vocational Courses mentioned therein through the



Public Private Partnership mode. As per the said agreement, the Patliputra University and the J.D. Women's College granted exclusive rights to the petitioner to finance and develop the training infrastructure of the Vocational Training Centre and to run University courses for a period of 25 years from the appointed day. As per the revenue sharing agreement, the Company is entitled to receive its pre-defined share of 79% of the course fee and the College is entitled to withdraw its 21% share of course fee from the designated Escrow Account and the Company opened an Escrow Account at State Bank of India, J.D. Women's College branch at Patna and an "Escrow Account Agreement" was executed by the petitioner on behalf of the Company with the College under which the Company is entitled for withdrawing 79% of the deposit without any objection or obstruction by any of the parties.

5. It has further been submitted that as per the said agreement, the fee structure was to be decided by the Vocational Course Committee of the College and the Company was entitled for 30% enhancement of the existing fee every three years. In terms of the agreement, a meeting of Vocational Course Committee under the Chairmanship of the Principal-cum-Director, Vocational Courses, J.D. Women's College, Patna, was



held on 30.6.2016 by which it was resolved that the course fee be enhanced from its current fee of Rs. 21,150/- to Rs.27,300/- from the Academic year 2016-17 onwards and it was further resolved that from the Academic Year 2018-19 onwards, the chargeable course fee would be Rs. 35,490/- but constitution of the Patliputra University, Patna from March, 2018, the University unilaterally in breach of the agreement, without any application of mind reduced the fee uniformly across all constituent colleges to Rs.15,000/- per year.

6. It has further been submitted that the Company charged a fee of Rs. 30,490/- from each of the admitted students after deducting Rs.5,000/- which was being collected by the University. If the University intends to subsidize the course, it could reimburse the difference of fee to the students but it could not in violation of the agreement, direct the petitioner to meet all the expenses and bear huge losses. However, the College being well aware of the aforesaid factual position, the Principal, J.D. Women's College, threatened and directed the petitioner to refund the excess fee charged from the students admitted to the 1 year of the under Graduate Vocational BBM and BCA courses at J.D. Women's College, Patna, in the academic year 2018-19 and to enter a fresh agreement with Patliputra University.



7. It has further been submitted that the Company by its letter dated 16.11.2018, addressed to the College with a copy to the University and the Hon'ble Chancellor, denied that it has violated any terms of the agreement or having charged fee in excess of what has been permitted under the agreement. It requested the College to act in terms of the agreement and also stated that since Patliputra University is the successor University of Magadh University, it is not required to execute any fresh agreement and the same is binding on the parties.

8. It has further been submitted that without invoking the termination clause as provided in the agreement and with the agreement subsisting to the shock of the petitioner, the College and the University instead of acting in terms of the agreement resorted to whimsical and arbitrary action in absolute misuse of their statutory position and lodged an FIR against the petitioner.

9. Learned counsel for the petitioner has submitted that the petitioner had also filed a writ application before this Court bearing CWJC No. 23368 of 2018. He further submits that within the writ petition and the petitioner's company has proceeded for arbitration by issuing notice to the University and the matter is under progress.

10. Learned counsel for the State supported the



prosecution case and has submitted that the petitioner ought to have entered into an agreement with Patliputra University and the excess fee charged by the petitioner is illegal and the offence is made out against the petitioner.

11. I have heard the submissions of both the parties and also perused the materials available on record. It appears that the entire dispute has arisen when some colleges from the Magadh University were transferred to the newly formed Patliputra University and then Patliputra University is trying not to recognize the agreement between its predecessor Magadh University and the petitioner. From reading the documents available on record which are of impeccable in nature and cannot be disputed by State, it appears that there was no criminality involved and no offence has been committed by the petitioner and the petitioner has charged fees as per the registered concession agreement and the subsequent increase in fees has been signed by the informant herself.

12. For quashing the prosecution at the initial stage, the Court has to look between the lines and come to a finding as to whether the prosecution of the petitioner is *mala fide* or *bona fide*. The Hon'ble Supreme Court in case of ***Salib Alias Shalu Alias Salim Vs. State of U.P and Others*** reported in **2023 SCC**



OnLine SC 947 has held as under :-

26. However, as observed earlier, the entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of Bhajan Lal (supra). The parameters are:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just



conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. This Court is also of the view that at the stage of cognizance, the materials relied upon an impeccable nature can be looked into by this Court, in view of the law laid down by Hon'ble Supreme Court in case of ***All Cargo Movers (India) Private Limited and Others Vs. Dhanesh Badarmal Jain and Anothers*** reported in ***(2007) 14 SCC 776***.

14. This Court is of the view that petitioner has now proceeded for arbitration and a civil suit cannot be allowed to be given colour of criminal case.

15. In view of the above, this application is allowed. The impugned order dated 21.10.2021 passed by learned Addl.



Chief Judicial Magistrate-IV, Patna in Shastrinagar P.S. Case
No. 810 of 2018 and all consequential proceedings arising out of
aforesaid F.I.R are hereby quashed in the interest of justice.

(Sandeep Kumar, J)

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