

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15133 of 2023

Arising Out of PS. Case No.-37 Year-2023 Thana- BETTIAH CITY District- West
Champaran

Kapil Kamboj, aged about 35 years (male), Son of Late Rakesh Kamboj,
Resident of H. No.- 217, Ground Floor, Tagore Park, Model Town - II, P.S.-
Mukherjee Nagar, District - North West Delhi 110009

... .. Petitioner/s

Versus

1. The State of Bihar
2. Avadh Kishore Singh, aged about 33 years (male) Son of Late Sh. Kailash
Pati Singh Resident of Malahi Tola, Ward No.- 05, P.S.- Bairia, District-
West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Saket Tiwary, Advocate Mr. Animesh Gupta, Advocate Mr. Shivam Gupta, Advocate
For the State	:	Mr. Abhay Kumar, APP
for the Informant	:	Mr. Bipin Kumar, Advocate Ms. Sarita Kumari, Advocate Ms. Vanshika Nupur, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 29-07-2024 Heard the parties.

2. The present application has been filed for quashing
the FIR being Bettiah Nagar P.S. Case No. 37/2023 registered
for offences punishable under sections 419, 420, 467 and 468 of
the Indian Penal Code. The FIR has been registered on a
complaint under Section 156 (3) Cr.P.C. bearing Complaint
Case No. 3013/2022 filed by opposite party no. 2.

3. As per the FIR, the substance of the allegation is
that the petitioner demanded Rs.12,00,000/- (Rs. Twelve Lakh



only) as security amount from the opposite party no. 2 for providing a job in the Tourism Department, Government of Bihar and out of the aforesaid amount, Rs. 6,00,000/-(Rs. Six Lakh only) was to be paid as advance. It is further alleged that on the assurance of the petitioner, the opposite party no. 2 gave Rs. 6,00,000/-(Rs. Six Lakh only) to the petitioner for providing job to him but neither the job was provided to opposite party no. 2 nor on demand, the money was returned.

4. Learned counsel for the petitioner submits that the informant- opposite party no. 2 has falsely implicated the petitioner in the instant FIR. The petitioner is not involved in any criminal case. He further submits that the petitioner does not know the opposite party no. 2 and it seems that some trap is organized in order to implicate the petitioner in the false and frivolous case.

5. Learned counsel also submits that the opposite party no.2 has not furnished a single proof which could be corroborated with the facts of the case and even the police also asked for some proofs from the opposite party no. 2 which he could not give at all and the source of the amount stated in the impugned FIR has not been verified at all. The opposite party no. 2 has not provided any evidence of payment in any way.



6. It has been submitted by learned counsel for the petitioner that when the opposite party no. 2 met with the petitioner on October 21, 2021, how a person can give Rs. 6,00,000/-(Rs. Six Lakh only) to an unknown person within a period of two months. It has also been submitted that the opposite party no. 2 has failed to prove any communication with the petitioner and there is not even a single communication between the petitioner and the opposite party no. 2 in any form i.e. call, messages, WhatsApp, emails etc. The opposite party no. 2 was not even aware about the address of the petitioner before handing over cash.

7. It has further been submitted by learned counsel for the petitioner that the case of the opposite party no. 2- Informant is totally false and frivolous as the very recital in the complaint case would reveal that the same is highly improbable and thus clearly for oblique reasons best known to the opposite party no. 2. On the face of the allegations made by the opposite party no. 2, no offence under Sections 419, 420, 467 and 468 of the Indian Penal Code, 1860 could be made against the petitioner.

8. It has further been argued by learned counsel for the petitioner that Section 419 of the Indian Penal Code prescribes punishment for the offence of cheating by



personation. The essential ingredients to frame the charge under Section 419, first and foremost, it is required to be proved that the accused induced someone to deliver any property and secondly, the accused did so dishonestly by impersonating himself as someone else. In the present case, the opposite party no. 2 nowhere stated that due to impersonation of the petitioner, the opposite party no.2 was induced to grant gratification for procurement of job and it is also not stated that such gratification for procurement of job would not have granted in case the petitioner did not impersonate himself. Since there is nothing in the evidence to show that the opposite party no. 2 was induced by the petitioner, the petitioner could not be guilty for cheating by personating.

9. It has also been argued that a bare perusal of the complaint reveals that even if the parties were in agreement to commit an offence, employment in Government cannot be purchased by money and therefore such appointment is outright illegal appointment. It has been submitted that even if two persons agreed to commit an act which is an offence under the Indian Penal Code and the agreement failed because the crime could not be committed, it cannot be said that it constitutes an offence when the agreement itself was an offence.



10. The petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Deepak Kumar Shrivastava and Anr. vs. State of Chhattisgarh and Ors.*** reported in (2024) 3 SCC 601 as also the following judgments which is quoted hereinbelow for ready reference:

(i). ***Vijay Sharma and Anr. vs. State of Bihar & Anr.*** reported in 2011(1) PLJR 780;

(ii). ***Manju Devi vs. The State of Bihar and Ors.*** reported in 2017(2) PLJR 560;

(iii). ***Narender Prasad Pandey vs. State of Bihar and Ors.*** reported in (2019) SCC Online Pat 403;

(iv). ***Prahlad Rai and Ors. Vs. The State of Bihar in Cr. Misc. Misc No. 6097 of 2015*** vide order dated 15.05.2021 and

(v). ***State of Haryana Vs Bhajan Lal*** reported in 1992 Supp (1) SCC 335

11. In view of the judgments cited above, the petitioner cannot be prosecuted.

12. Learned APP for the State and learned counsel for the opposite party no. 2 have opposed the prayer for quashing. Learned counsel for the opposite party no. 2 has submitted that the petitioner has cheated the opposite party no. 2 in the name of providing job and therefore the prosecution cannot be quashed at this stage.

13. I have considered the submissions of the parties.



The Hon'ble Supreme Court in the case of **Deepak Kumar**

Shrivastava (*supra*) at paragraph nos. 15 and 16 has held as follows:

“15. A reading of the entire material on record clearly reflects that it was totally an unlawful contract between the parties where money was being paid for securing a job in the government department(s) or private sector. Apparently, a suit for recovery could not have been filed for the said purpose and even if it could be filed, it could be difficult to establish the same where the payment was entirely in cash. Therefore, the respondent no. 6 found out a better medium to recover the said amount by building pressure on the appellant and his brother by lodging the FIR. Under the threat of criminal prosecution, maybe the appellant would have tried to sort out and settle the dispute by shelving out some money.

16. In conclusion, certain key observations from the factual matrix warrant a closer reflection. Prima facie, the conduct exhibited by the parties involved appears tainted with suspicion, casting a shadow over the veracity of their claims. The report from the previous inquiry reflects a convoluted landscape and unveils a trail of unethical, maybe even criminal, behaviour from both parties. The unexplained inordinate delay in bringing these allegations to the police's attention despite knowledge of previous inquiry raises even more doubts and adds a layer of scepticism to the authenticity of the claims. The facts stated, as well as the prior inquiry, reveal a shared culpability between the parties, indicative of a complex web of deceit, and unethical transactions where even civil remedies may not be sustainable. Thus, the object of this dispute, manifestly rife with mala fide intentions of only recovering the tainted money by coercion and threat of criminal proceedings, cannot be allowed to proceed further and exploit the time and resources of the law enforcement agency.”



14. Considering the aforesaid submissions of the parties, the present prosecution appears to be a *mala fide* prosecution initiated by the opposite party no. 2, who seems to be a name lender and it has been filed at the instance of some dispute with the opposite party no. 2. The Supreme Court in the case of **Deepak Kumar Shrivastava** (*supra*) has clearly held that no person can be prosecuted for an allegation of having received money for providing a job to anyone.

15. In view of the above, this application is allowed.

16. Accordingly, the FIR bearing Bettiah Nagar P.S. Case No. 37/2023 is hereby quashed.

(Sandeep Kumar, J)

P. Kumar/Saif

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