

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19194 of 2016

Arising Out of PS. Case No.-116 Year-2011 Thana- RIGA District- Sitamarhi

Ashok Kumar Sharma son of Late Rameshwar Lal Sharma, resident of village- Riga Mill Bazar, P.S.- Riga, District- Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Branch Manager, S.B.I., Riga Branch, Sitamarhi Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Anand
For the Opposite Party/s	:	Mr. S.Ehteshamuddinapp
For the Bank	:	Mr. Binod Bihari Sinha, Advocate
		Mr. Ajay Dutt Mishra, Advocate
		Mr. Amarjeet Choudhary, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

10 08-01-2026 Heard the learned counsel for the petitioner, the learned counsel for the State and the learned counsel for the Bank.

2. The present application has been filed for quashing the order dated 09.12.2015 passed by S.D.JM., Sitamarhi in Tr. No. 1356/2015, G.R.NO. 1784/2011 arising out of Riga P.S. Case No. 116/2011 by which the discharge application filed by the petitioner u/s 239 Cr.P.C. was rejected observing therein that although the offence of cheating is not completed but petitioner has tried to committed offence.

3. The short facts of the case are that the Opposite Party No. 2, the Branch Manager of SBI Riga Branch, lodged a



written report on 08.07.2011 alleging that the petitioner attempted to obtain an educational loan in the name of his son by submitting a false affidavit stating that no prior loan had been taken from any bank. It is further alleged that the petitioner had previously availed a loan from SBI Bazar Branch, Sitamarhi in the name of his business firm "Durga Lime and Chemical Industry", and subsequently sold the property without repaying the loan.

4. Learned counsel for the petitioner submits that the learned Magistrate has committed a manifest error of law in rejecting the discharge application by observing that although the offence of cheating is not completed, the petitioner has "tried to commit the offence". He further submits that no offence as alleged against the petitioner is made out.

5. On the other hand, learned A.P.P. for the State opposes the application.

6. I have heard and considered the submissions of the parties and have gone through the records of the case.

7. After careful perusal of the materials available on record and the impugned order, this Court finds that the reasoning adopted by the Court below, while rejecting the discharge petition, is legally unsustainable. It is well settled that



where the basic ingredients of the alleged offence are absent and continuation of the criminal proceeding would amount to abuse of the process of court, the inherent powers of this Court under Section 482 Cr.P.C. can and ought to be exercised to secure the ends of justice.

8. In the present case, this Court is of the opinion that the continuation of the criminal proceeding against the petitioner would be an abuse of the process of law and the impugned order has been passed without application of mind. From the perusal of the impugned order rejecting the discharge application itself it is clear that the cheating was not done. In these circumstances, when the offence has not been committed, there is no need of prosecuting the petitioner who is a student.

9. In view of the discussions made above, the present application stands allowed. Accordingly, the order dated 09.12.2015 passed by S.D.JM., Sitamarhi in Tr. No. 1356/2015, G.R.NO. 1784/2011 arising out of Riga P.S. Case No. 116/2011 is hereby quashed. The petitioner stands discharged in Riga P.S. Case No. 116 of 2011.

(Sandeep Kumar, J)

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