

(2019) 03 PAT CK 0043

In the Patna High Court

Case No : Criminal Miscellaneous No. 48943 Of 2013

Santosh Kumar Trivedi

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 415, 420

Code Of Criminal Procedure, 1973 — Section 245, 482

Citation : (2019) 4 PLJR 175

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Radha Mohan Pathak, Vishwajeet Kumar Mishra, Ashutosh Tripathi, Jharkhandi Upadhyay, Krishna Prasad Singh, Bhashkar Shankar, Saket Kumar Singh, Rakesh Singh, Sanjay Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner; learned A.P.P. for the State and Mr. Krishna Prasad Singh, learned senior counsel along with Mr.

Bhashkar Shankar, learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), for the

following relief:

That, this application is being filed for quashing of the order dated 03.10.13 passed by Smt. Rashmi Prasad Judicial Magistrate, Patna

in complaint case no. 3152(c)/11 u/s 420 IPC by which the prayer of the petitioner for discharge has been rejected.

3. The allegation against the petitioner is that he was the Cycling Coach of the complainant (opposite party no. 2) and had assured him to get a job in

the Railways for which he had demanded Rs. 2,50,000/- to be paid to the authorities. It was alleged that out of the same, Rs. 1,50,000/- was paid but when the appointment was not made, on demand for return of money by the opposite party no. 2, the petitioner is said to have threatened him for neither providing him job nor returning the money and also of ruining his cycling career.

4. Learned counsel for the petitioner submitted that the complaint case is totally false and frivolous as the very recital in the complaint case would

reveal that the same is highly improbable and, thus, is clearly for oblique reasons. It was submitted that in the complaint it has been stated that the

opposite party no. 2 became very close to the petitioner and upon being offered employment under the Railways had agreed to pay Rs. 2,50,000/- out

of which Rs. 1,50,000/- had been paid. It was submitted that the opposite party no. 2 has stated that he had filled up the form for being appointed as

T.T.E. under the Railways. Learned counsel submitted that this clearly falsifies the claim of the opposite party no. 2 that the petitioner had promised

him a job and had taken Rs. 1,50,000/- from him, for the reason, that the opposite party no. 2 was aged only 16 years at the relevant time and for the

post of T.T.E. the minimum age is 18 years and, thus, it was absolutely not possible for the opposite party no. 2 to be appointed as T.T.E. as his age

was clearly mentioned in the official certificates. Learned counsel submitted that while filling up the form the opposite party no. 2 cannot claim that he

was unaware of the eligibility criteria and further, the plea that the petitioner would offer him a job under the Railways when the petitioner was

nowhere connected with the Railways is a completely false statement. Learned counsel submitted that in the complaint case, the opposite party no. 2

has also not stated as to who was the person in the Railway Recruitment Board to whom the money would be given so as to satisfy the opposite party

no. 2 that the offer was genuine. Learned counsel submitted that no prudent man is expected to part with a huge sum of money of Rs. 1,50,000/- on

bold assurances without there being any authenticity of the person for whom the money is given, inasmuch as, in the present case neither the petitioner

was a member of the Railway Recruitment Board nor he had mentioned to the opposite party no. 2 the name of any person whom the petitioner

claimed to know and through whom a job would be procured and, most importantly, the age of the opposite party no. 2, which clearly made him aware

that he was underage to qualify the basic eligibility criteria with regard to appointment on the post of T.T.E. under the Railways. Learned counsel

submitted that under similar circumstances, as cognizance has been taken only under Section 420 of the Indian Penal Code, a Bench of this Court in

Vijay Sharma vs. State of Bihar reported as 2011 (1) PLJR 780 has held that if the complainant voluntarily parted with money for an illegal purpose of

securing appointment in Government service for a money consideration which itself was an offence, he could not urge that he had been cheated and

that the concept of cheating shall have no application where the act which is stated to constitute cheating was itself an offence. Learned counsel

further submitted that the present case has been filed at the behest of persons, who are inimical to the petitioner, who is the State Secretary of the

Cyclist Association and due to rivalry within the Association, the opposite party no. 2 has been set up to file the frivolous complaint.

5. Learned A.P.P. submitted that the Court had rightly rejected the petition for discharge on the basis of materials available. However, he fairly

submitted that in view of the decision of this Court in Vijay Sharma (supra) no offence under Section 420 of the Indian Penal Code is made out.

6. Learned counsel for the opposite party no. 2 submitted that there is difference in the decision of Vijay Sharma (supra) to the facts of the present

case. It was submitted that in the said case, the allegation was that the parties were related by marriage and the complainant was satisfied of the

assurance for Government employment for money consideration on the promise that in case of failure the money shall be returned. It was submitted

that in the present case, there was no assurance that the money would be returned and, thus, the ratio of the said case would not apply to the facts of

the present case. On a query of the Court that as to how such distinction was available when in the present case also, the opposite party no. 2 himself

has stated that he became very close to the petitioner and in the end it is said that when he went to ask for return of the money taken, he was

threatened that his career would be ruined and that he would not be provided with the job and the money would also not be returned, which clearly

shows that till the end there was no going back on the promise of providing job which makes the present case stand on a better footing, learned

counsel could not counter or reply to the same.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. In the background of the statement of the complainant that he was close to the petitioner and had given him Rs. 1,50,000/- when tested against his own statement in the complaint that the money asked was for illegal gratification and the opposite party no. 2 agreed to the same and further when the complainant claims that he had filled up the form for the post of T.T.E., it cannot be expected that the opposite party no. 2 was unaware that he was inherently ineligible for appointment on the post of T.T.E. under the Railways on account of his age and, thus, it cannot be believed or expected that still the opposite party no. 2 would hope to get the job of T.T.E. under the Railways under such situation. Further, the Court finds that the decision in Vijay Sharma (supra) squarely covers the present case as the facts of the present case stand on a better footing, as compared to the facts of Vijay Sharma (supra), especially with regard to the charge under Section 420 of the Indian Penal Code where at paragraph no. 9, the Court has held as under:

“9. That brings to the fore, the submission that nonetheless an offence of cheating under Section 420 I.P.C. was made out. Section 415 defines offence of cheating. The essential ingredients are intention to deceive any person fraudulently, to dishonestly induce the person so deceived to deliver any property which he would not have done if he was aware of the deception. The essential ingredient therefore is a dishonest intention from the very inception. In the present case there is no allegation of a dishonest intention from the inception. On the contrary the complaint states that the parties were related by marriage and the complainant was satisfied of the assurance for Government employment for a money consideration on the promise that in case of failure the money shall be returned. What is then urged is that when the illegal contract fell through, the money was not being returned. In absence of any allegations of a fraudulent and dishonest intention from the very inception or a narration to that effect, this Court is not satisfied to accept the plea that charge could always be framed under the appropriate sections. If the complainant voluntarily parted with money for an

illegal purpose of securing appointment in Government

service for a money consideration, which itself was an offence, can he urge that he has been cheated. The concept of cheating shall have

no application where the act which is stated to constitute cheating was itself an offence. He was aware of the crime and cannot contend that

failure to commit the crime amounted to cheating him.â??

9. Moreover, the Court finds that the opposite party no. 2 has himself stated that the petitioner had threatened that if the opposite party no. 2 would

keep asking for money, the job would not be provided to him, which clearly indicates that there was no dishonest intention from beginning, which is the

basic ingredient to constitute an offence under Section 415 of the Indian Penal Code and based upon the same only offence under Section 420 of the

Indian Penal Code can be made out.

10. For reasons aforesaid, the application is allowed.

The entire complaint case, including the order taking cognizance under Section 420 of the Indian Penal Code dated 15.02.2012 as well as the order

dated 03.10.2013 in Complaint Case No. 3152(C) of 2011 by which petition under Section 245 of the Code has been rejected, stand quashed.

11. The Lower Court Records be returned forthwith.