

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20143 of 2015**

Arising Out of PS. Case No.-9 Year-2014 Thana- BHOJPUR COMPLAINT CASE District Bhojpur

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Sri Vinod Jain @ Vinod Mohan Lal Jain, S/o Mohan Lal Jain, Resident of 3/3/ F Winf, Subhash Housing Co-Operative Society Limited, Bandukwala Compound, Ground Floor, Sawani Road, Dadar, P.S. - Dadar West , Mumbai - 25, Maharashtra.

... ... Petitioner/s

Versus

1. State of Bihar
2. Birendra Gupta, S/o Late Sadan Gupta, Resident of Village - Koilwar, P.S. - Koilwar, Dist. - Bhojpur Ara.

... ... Opposite Party/s

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Code of Criminal Procedure, 1973—Section 482—Indian Penal Code, 1860—Sections 406 and 420—Quashing of cognizance order—petitioner had shown himself as an agent of the several engineering colleges of Mumbai and promised son of complainant to get him admitted in a good engineering college and asked him to arrange money for admission—promise was made in another State (Mumbai)—money in advance was given in another State (Bihar)—after cognizance and issuance of warrant of arrest against petitioner, complainant left his attendance before the trial Court—on direction of Hon’ble High Court an enquiry with regard to the verification of address of complainant was conducted and it was found to be false—order impugned taking cognizance of offences against petitioner, set aside and the matter was remitted back to the trial Court with a direction—learned Magistrate shall pass a fresh order on the point of cognizance within six months but not beyond that—petitioner shall not be directed to appear in-person during the course of enquiry till the date of passing the order on point of cognizance by the learned Magistrate and an opportunity of hearing before the passing of order on the point of cognizance in the light of the provision under Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023—petition allowed with direction.

(Paras 5 to 9)

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Appearance :

For the Petitioner/s : Mr. Uday Shankar Choudhary, Advocate
Mr. Adarsh, Advocate
For the State : Mr. B. Ram, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER**

14 21-03-2025 Heard Mr. Uday Shankar Choudhary, learned counsel
for the Petitioner and Mr. B. Ram, learned APP for the State.

2. The instant petition has been filed under Section
482 of the Code of Criminal Procedure, 1973 (in short ‘Cr.P.C.’)
with a prayer to quash the order dated 20.11.2014 passed by
learned Railway Judicial Magistrate 1st Class, Ara, Bhojpur, in
Complaint Case No. 09/2014 whereby the cognizance of the
offences under Sections 406 and 420 of the Indian Penal Code
(in short ‘IPC’) has been taken against the petitioner.

3. Mr. Uday Shankar Choudhary, learned counsel
appearing for the petitioner submits that the petitioner is
resident of Maharashtra state having no connection to Bihar



state and the complainant and his son are complete stranger to the petitioner. In fact, the petitioner is an RTI activist in Mumbai and has remained involved in getting relevant informations against several persons in respect of the wrongs and irregularities committed or suspected to be committed and one builder in Mumbai being aggrieved with the activity of this petitioner under the RTI Act got the several cases lodged against the petitioner in many districts of Bihar in collusion with his labourers who belong to Bihar state. In the present matter, the prosecution story narrated by the complainant, is completely imaginary and not believable and the most important thing is that after the cognizance of the alleged offences, the complainant left his attendance before the trial court and the purpose of the complainant was only to harass the petitioner by getting the arrest warrant issued through the court against the petitioner and by getting his appearance in Bihar state to put him in fear and thereafter, extort money from him. In this matter, several notices were sent to the complainant who is here the O.P. No. 2 to the address detailed in the complaint but all the processes were returned as un-served and then it came to the knowledge of the petitioner that the complainant is a completely fake and fictitious person and then at the direction of this Court,



an enquiry, to verify the present residing address of the complainant, was conducted by the Deputy Superintendent of Police, Sadar, Ara and in this regard, a report was sent by him through the Superintendent of Police of Bhojpur, Ara and the same is available before this Court on the case record. It is further submitted that Sub Divisional Police Officer, Sadar, Ara mentioned in his report that regarding the address of complainant shown by him in his complaint, local persons, local chowkidars and Ward Parshads were enquired and they stated that no such person like the complainant was residing nor is a resident in the area concerned relating to the complainant's address which is in itself sufficient to show the intention of the complainant. Learned counsel further submits that during the enquiry only the complainant and his son appeared and recorded their statements and except them, no other person appeared and no documentary evidence with regard to the proof of payment of the alleged amount was given and in the complaint, the complainant disclosed his son as sole witness and as per the allegation, a sum of Rs. 2,00,000/- was taken on different dates by the petitioner from the complainant and his son for the admission of complainant's son in an engineering college but regarding this allegation, except the bald statement of the



complainant and his son, there is nothing and further, no documentary evidence showing the qualification of complainant's son for being eligible to get the admission in an engineering college at the relevant time was given.

4. On the other hand, Mr. B. Ram, learned APP appearing for the State submits that though the complainant's address shown by him in his complaint was found to be false, during the course of inquiry made by a police officer, but the same cannot be made a ground to disbelieve the allegation of the complainant at this stage in this quashing application and the concerned inquiry court may be directed to take further more evidence in the light of the aforesaid defences taken by the petitioner.

5. Heard both the sides and perused the order impugned, the complaint petition of the O.P. No.2 and his S.A. as well as statement of complainant's son, sole enquiry witness. As per the allegation, the petitioner had shown himself as an agent of the several engineering colleges of Mumbai and promised the complainant's son to get him admitted in a good engineering college and asked him to arrange Rs. 2,00,000/- for admission and these events took place in Mumbai and thereafter, the petitioner suddenly came to Patna (Bihar) and then he was



called by the complainant's son at his residence situated in Ara District and during that course, Rs. 1,00,000/- in cash and the copies of the relevant certificates of the complainant's son were given and handed over to the petitioner by the complainant's son at Ara Railway Station. Thereafter, as per allegation, the complainant's son went to Mumbai where Rs. 1,00,000/- was again taken by the petitioner in the name of admission and he started demanding more and more money on various pretexts. Here it is important to mention that after cognizance and issuance of warrant of arrest against the petitioner, the complainant left his attendance before the trial court and a Senior Police Officer in the rank of S.D.P.O conducted an enquiry with regard to the verification of the address of the complainant shown by him in his complaint then it was found that the complainant was not a resident of the given address and that enquiry was conducted at the direction of this Court. Though the said enquiry report is important but merely due to this reason, the complainant's allegation should not be disbelieved completely and the petitioner is not entitled to be absolved completely from all the criminal liabilities at this stage and the interest of justice will be served only if some more additional evidence is taken from the complainant to find out



the *prima facie* commission of the alleged offence of cheating. Accordingly, the order impugned taking cognizance of the alleged offences against the petitioner, is hereby set aside and the matter is remitted back to the trial court with a direction to take some more additional evidences from the complainant such as the source through which the complainant arranged the money, which was allegedly given to the petitioner, the relevant documents showing the qualification of complainant's son to get the admission in an engineering college etc. and the process of taking these evidences in enquiry must be completed within six months from the date of receipt of this order's copy.

6. The learned Magistrate will take steps at his own level to make the complainant aware of this order and in this regard, the advocate who initially represented the complainant in the enquiry may inform the complainant if he is still in contact with him, alternatively relevant information regarding the complainant's present residing address may be obtained from him or other lawful measures may be taken by the learned Magistrate to inform the complainant about this order.

7. The learned Magistrate shall pass a fresh order on the point of cognizance within six months but not beyond that. If the complainant does not appear, or chooses not to give any



further evidence or if all attempts to make the complainant aware of this order fail, then in the presence of either of these circumstances, the learned Magistrate shall draw the necessary presumption and pass an appropriate, justifiable and reasoned order without being prejudiced with this order, according to merit.

8. The petitioner shall not be directed by the learned Magistrate to appear in person during the course of enquiry till the date of passing the order on the point of cognizance by the learned Magistrate and an opportunity of hearing before the passing of order on the point of cognizance in the light of the provision under Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short ‘B.N.S.S.’) will be granted to the petitioner, if he so desires, through his counsel.

9. Accordingly, the instant petition stands allowed with the aforesaid directions.

(Shailendra Singh, J)

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