

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42964 of 2016**

Arising Out of PS. Case No.-1942 Year-2013 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

CHANDRA SHEKHAR DWIVEDI @ CHANDRA SHEKHAR DUBEY, S/o
Byas Dubey, R/o Village- Balara, P.S.- Sidhwalia, District-Gopalganj

... ... Petitioner/s

Versus

1. State of Bihar
2. Birendra Kumar Pandey S/o Late Ramayan Pandey R/o Village- Pakadi P.S.-
Mahammadpur, District-Gopalganj

... ... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Satyendra Rai, Advocate.
For the Opposite Party/s : Mr. Kanhaiya Kishore

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 04-09-2025

Heard Mr. Satyendra Rai, learned counsel appearing
on behalf of the petitioner and Mr. Kanhaiya Kishore, learned
APP for the State.

2. The present application has been filed under
Section 482 of the Cr.P.C. for quashing of the order dated
19.12.2014 passed by the learned Judicial Magistrate First
Class, Gopalganj in Complaint Case No. 1942(C) of 2013 (Trial
No. 551 of 2016), whereby the learned Magistrate has taken
cognizance against the petitioner under Sections 417, 418 and
403 of the Indian Penal Code.

3. As per the allegation made in the complaint, the
petitioner along with other co-accused had taken money from



the complainant and other persons on the pretext of providing them B.Ed certificate, but the accused persons including the petitioner cheated the complainant and other persons and also not returned their money.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is innocent and he has committed no offence as alleged. He further submits that the very intent of the complainant is vested with *malafide* who had tried to procure B.Ed degree by committing forgery in connivance with one co- accused Lal Prakash Tiwary. Learned counsel has claimed that the petitioner who was a teacher in government school has now retired from service. He submitted that frivolous accusation has been made against the petitioner with an oblique motive. No prosecution can sustain on the basis of a void contract which was entered into between the co-accused namely Lal Prakash Tiwary and the complainant. Learned counsel submits that the complainant has neither furnished any proof to corroborate with the facts of the case nor the source of the amount stated in the complaint has been verified at all. The complainant has also not provided any evidence of payment in any way. It has also been submitted that the complainant has failed to prove any communication with the petitioner and there is not even a single communication between



the petitioner and the complainant in any form i.e. call, messages, Whatsapp, emails, etc. It has further been submitted by learned counsel for the petitioner that the case of the complainant 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 an oblique reasons best known to the complainant. On the face of the allegations made by the complainant, no offence under Sections 417, 418 and 403 of the Indian Penal Code is made out against the petitioner.

5. 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 IPC, 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 complainant nowhere stated that due to impersonation of the petitioner, complainant was induced to grant gratification to procure B.Ed certificate and it is also not stated that such gratification for procurement of B.Ed certificate would not have granted in case the petitioner did not impersonate himself. Since there is nothing in the evidence to show that the complainant was



induced by the petitioner, the petitioner could not be held guilty for cheating by impersonating the complainant.

6. It has also been argued that a bare perusal of the complaint reveals that procuring B.Ed certificate by money is out-rightly illegal. 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.

7. Learned APP for the State opposed the quashing application and has submitted that there is sufficient material collected in course of investigation and the learned Judicial Magistrate has applied his mind while taking cognizance of the offence under Sections 417, 418 and 403 of the Indian Penal Code.

8. Heard the parties.

9. Having heard the rival submissions made on behalf of the parties, as well as, having perused the allegation made in the complaint by the complainant Birendra Kumar Pandey who with an oblique motive to procure B.Ed degree in an illegal manner had entered into a contract with co-accused Lal Prakash Tiwary. The said contract is void contract and the petitioner who is facing malicious prosecution, I find from the



very perusal of the content of the complaint so far as the petitioner is concerned is frivolous.

10. The Apex Court in the case of ***Gherulal Parakh v. Mahadeodas Maiya, 1959 SCC OnLine SC 4*** has observed in Paragraph No.7 that immoral contract shall be considered as void, which is reproduced hereinafter:

“7. Now we come to the main and substantial point in the case. The problem presented, with its different facets, is whether the said agreement of partnership is unlawful within the meaning of Section 23 of the Indian Contract Act. Section 23 of the said Act, omitting portions unnecessary for the present purpose, reads as follows:

“The consideration or object of an agreement is lawful, unless it is forbidden by law, or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

Under this section, the object of an agreement, whether it is of partnership or otherwise, is unlawful if it is forbidden by law or the Court regards it as immoral or opposed to public policy and in such cases the agreement itself is void.”

11. Similar view has been followed by this Court in the following judgments:

(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 15.05.20219 and

12. Recently also, 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, has reiterated the same principle of law in paragraph nos. 15 and 16, which are reproduced hereinafter:

"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."

13. In view of the discussions made hereinabove and the law laid down by the Apex Court, I find that for any agreement between two parties which was unlawful from its



very inception and only material against the petitioner that he had introduced both the parties who intended to exploit the law for an illegal purpose, the very maintainability of the illegal contract is required to be decided on its own merit in an appropriate civil proceeding. The petitioner, if allowed to face criminal prosecution on the basis of void agreement, will amount to abuse of process of the court. Accordingly, the entire criminal proceeding arising out of Complaint Case No. 1942(C) of 2013 (Trial No. 551 of 2016) and the order taking cognizance dated 19.12.2014 are set aside and quashed, so far as the petitioner is concerned.

14. The present quashing application stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	AFR
CAV DATE	N.A.
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