IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18686 of 2015

Arising Out of PS.Case No. -318 Year- 2014 Thana -SAMASTIPUR COMPLAINT CASE District- SAMASTIPUR

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Arvind Singh Shekhawat, son of G.S. Shekhawat, the Chairman, Bihar Gramin Bank, Head Office at Zero Mile Begusarai, P.S.- Barauni, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ajay Kumar son of Late Mahendra Mahto, Resident of village- Sahit, P.S.- Vidyapatinagar, District- Samastipur

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Abhay Shankar Singh
For the Opposite Party/s : Mr. Manish Kumar 2(App)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 30-04-2015 Heard Mr. Abhay Shankar Singh, learned counsel for the petitioner and Mr. Jitendra Narain Sinha, learned counsel for opposite party no.2.

2. The present application under section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") has been filed for quashing the order of cognizance dated 9.3.2015 passed in Complaint Case No.318 of 2014 by the learned Judicial Magistrate, 1st Class, Dalsingsarai by which finding a prima facie case to be made out for the offences punishable under sections 406, 418 and 419 of the Indian Penal Code he has directed to issue summons against the petitioner and one another.

3. The prosecution case, in brief, according to the opposite party no.2 Ajay Kumar, who filed a complaint on 4th July, 2014 vide Complaint Case No.318 of 2014 before the learned Additional Chief Judicial Magistrate, Dalsingsarai is that he was having Cash Credit Account No.39590500000427 in Bajidpur Branch of Bihar Gramin Bank. The said account became non-performing account (hereinafter referred to as "the NPA") in 2005 itself. He demanded statement of his account from the Branch Manager of Bajidpur Branch, namely, Binod Kumar but he refused to give statement of his account on the ground of work load and engagement. Then he took account statement from another branch of the bank and was surprised to see that on 7th March, 2014 Rs.20,000/- was debited from his account. He visited Bajidpur Branch and asked the Branch Manager about the said illegal withdrawal. The Branch Manager misbehaved with him and asked him to leave his office and gave threat of sending him in jail. The complainant, thereafter, went to the Headquarter of the bank and reached in the office of the Chairman (the petitioner) of the Bank at Begusarai who did not consider his application and threw it; saying that it was a usual affair in the bank. The complainant, thereafter, sent notice to the Branch Manager but no action was taken. Finally, he submitted written application before

the Officer-in-Charge of Vidyapati Nagar police station on 1st June, 2014 about the incident but no action was taken. Thereafter, he sent his application by registered post but even then nothing happened. Under the circumstances, the complaint case was filed in the court on 04th July, 2014.

4. Learned counsel for the petitioner has contended that even if the entire allegations made in the complaint is taken to be true, no offence is made out against the petitioner. He has contended that the petitioner is the Chairman of the Bihar Gramin Bank and is a Scale-VI Officer of United Commercial Bank which is the patron bank of the said Gramin Bank.

5. He has further contended that the Branch in question is situated at Bajidpur in the District of Samastipur, whereas the Headquarter of the Bank is situated at Begusarai. The Chairman of the Bank has never interacted with the complainant personally about the said loan account. Even according to the complaint petition, no transaction of any sort was ever made at the Headquarter of the Bank where the office of the petitioner is situated.

6. He has submitted that the petitioner being the Chairman of the Bank has unnecessarily been dragged in the case for a single entry of debit in the loan account of the complainant,

though he has not suffered any financial loss in his said loan account. It has been contended that the alleged debit from the account of the complainant was made on 07.03.2014 and it came to the knowledge of the complainant on 05.05.2014 but the complaint case was signed on 04.07.2014 and filed in the court of Additional Chief Judicial Magistrate, Dalsingsarai belatedly on 05.07.2014, though the debit amount was credited in his account on the very next date i.e., 08.03.2014, which fact has deliberately been suppressed by the complainant and the misconduct on his part is evident from the statement of the said loan account as contained in Annexure-2 to the present application.

7. Mr. Singh has submitted that the said account became NPA long back in the year 2005 itself and when the Bank took steps for recovery of the loan amount with interest, the present case with false and concocted allegation of abusing and giving threat by the Branch Manager of the Bajidpur Branch has been instituted with ulterior motive.

8. It has further been contended that the complainant was examined on solemn affirmation on 26th November, 2014 but neither in the complaint petition nor in his statement on oath before the court he has alleged any act of criminal breach of trust or cheating in any manner by this petitioner so as to attract the

ingredients of the offences punishable under Sections 406, 418 and 419 of the Indian Penal Code. He has further contended that the dispute of NPA loan account cannot be settled by use of criminal prosecution against the bank officials. The alleged debit in the NPA loan account of the complainant was, as a matter of fact, result of conversion of software in the bank and no loss was caused to any one by that. Therefore, there is no question of any criminal breach of trust or any manner of cheating by any one.

9. He has submitted that the petitioner being the Chairman of the Bihar Gramin Bank, which is a Government of India undertaking governed by the provisions of Regional Rural Bank Act, enacted by the Government of India is protected by the provision of section 197 of the Code. He submits that in view of protection given under section 197(1) of the Code no order taking cognizance of the offence and summoning the petitioner to face trial could have been passed against the petitioner by the learned Magistrate without obtaining prior sanction from the competent authority.

10. On the other hand, learned counsel for opposite party no.2, who has appeared suo motu in this case, has submitted that the opposite party no.2 has supported the allegations made in the

complaint in his statement made under section 200 of the Code on oath before the learned Magistrate. According to him, the allegations made in the complaint do attract the ingredients of the offences punishable under sections 406, 418 and 419 of the Indian Penal Code (hereinafter referred to as "the Penal Code").

11. He has further contended that at the stage of taking cognizance, the Magistrate should only consider the averments made in the complaint. If the complainant and witnesses are examined on oath, the Magistrate would appreciate their evidence too for the purposes of summoning an accused. However, at this stage meticulous analysis of evidence is not required to be done. He has further contended that since the learned Magistrate has found a prima facie case against the petitioner, it would not be proper even for this court to weigh and sift the evidence.

12. In view of the nature of allegation, as recorded hereinabove, I am of the view that none of ingredients of the offences alleged are attracted against the petitioner. I am also of the view that impleadment of the petitioner in the category of accused in the complaint petition is manifestly attended with mala fide for wrecking vengeance out of personal grudge.

13. It is not the case of the complainant that the accused persons dishonestly misappropriated or converted any property of

the complainant to their own use or dishonestly used or disposed of that property. The gist of the offence of criminal breach of trust punishable under section 406 of the Penal Code is entrustment of property and dishonest misappropriation thereof. In absence of these essential ingredients, the learned Magistrate could not have summoned the accused persons for having committed the offence punishable under section 406 the Penal Code.

14. Similarly, cheating is an essential ingredient of the offences punishable under sections 418 and 419 of the Penal Code. The word 'cheating' has been defined under section 415 the Penal Code. It is well settled to hold a person guilty of offence of cheating, it has to be shown that his intention was dishonest at the time of making of the promise. The complainant has no case that the accused persons got his cash credit account opened in the Bajidpur Branch of the Bihar Gramin Bank by any fraudulent inducement or willful misappropriation. It is clear from the complaint that the present is a simple case of a single inadvertent entry of debit in the loan account of the complainant and the debited amount was credited to the account of the complainant on the very next date. The inadvertent entry in the loan account caused no pecuniary loss to the complainant. Thus, I find that the requisite averments to make out a case of cheating are absolutely

silent in the present case. In that event, the cognizance for the offences under sections 418 and 419 of the Penal Code is also bad in eye of law.

15. Learned counsel for the petitioner has rightly argued that even if the allegations made in the complaint petition are taken at their face value and accepted in their entirety do not prima facie constitute or make out any case against the petitioner.

16. On the facts and circumstances of the case, in order to maintain purity in the administration of justice, I deem it fit and proper to quash the Complaint Case No.318 of 2014 including the impugned order dated 9.3.2015 passed in the said case by the learned Judicial Magistrate, 1st Class, Dalsingsarai, Samastipur. Accordingly, Complaint Case No.318 of 2014 and the impugned order dated 9.3.2015 are quashed.

17. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

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