

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50346 of 2012

1. Nawal Kishore Ram S/O Chhotelal Ram Resident Of Mohalla-Shankarpur, P.S- Muffasil, District- Munger.

.... Petitioner/s

Versus

1. The State Of Bihar

2. Batesh Nath Jha S/O Sri Jagarnath Jha Resident Of Village- Suhagpur, R.S- Palasi, District- Araira, At Present Branch Manager, State Bank Of India, Munger Bazar, Branch, P.S- Kotwali, District- Munger.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur

For the Opposite Party No. 2 : Mr. Din Bhandhu Singh

For the State : Mr. Ram Anurag Singh, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

5 19-05-2015 Heard Mr. Surendra Kishore Thakur, learned counsel for the petitioner, Mr. Din Bandhu Singh, learned counsel for Opposite Party No. 2, Branch Manager of SBI and learned counsel for the State.

The petitioner has filed this application for quashing of the order dated 20.09.2012 passed by the Judicial Magistrate- 1st class, Munger in connection with Kotwali P.S.Case No. 208/2011/ G.R. No. 944/2011, whereby the petition seeking discharge from the offences under Sections 409, 420, 467, 468 and 471 of the Indian Penal Code, has been dismissed.

The prosecution case lodged by one Batesh Nath Jha, who was Branch Manger, State Bank of India, Munger Bazar Branch,



P.S.- Kotwali, District- Munger had given a written application to the Officer In-charge alleging therein that while the petitioner was posted as an Accountant in the said Branch between 13.09.2009 to 09.07.2010, two account holders of the Bank namely, Priyadarsan and Nand Kumar in connivance with the petitioner and keeping the higher officials in dark have embezzled worth of Rs. 8,52,307/- by clearing cheques in favour of the aforesaid account holders. The petitioner filed a petition for discharge under Section 239 of the Cr. P.C. stating therein that after going through F.I.R. and the case diary, no prima-facie case is made out against him. He further stated that no prosecution case and no evidence of criminal intention to pass original signature of the co-accused, who hold original cheques have been alleged against the petitioner, hence, he submitted that no case under sections 409, 420, 467, 468, 469 and 471 of the Indian Penal Code is made out against the petitioner, hence, he should be discharged from the offences.

The learned Judicial Magistrate, 1st class, Munger having perused the materials on record and hearing submissions has arrived at the conclusion that the petitioner is named accused in the F.I.R.

After investigation, chargesheet under Sections 409, 420,



467, 468 and 471 of the Indian Penal Code has been submitted against the petitioner. The Chief Judicial Magistrate has also found prima-facie case against the petitioner and has taken cognizance against the petitioner under the aforesaid Sections. The Judicial Magistrate, 1st class, Munger also found that there are ample materials against the petitioner for framing of charge under the aforesaid Sections as is evident from paras- 3, 7, 8 and 35 of the case diary. Hence the petition for discharge filed by the petitioner, has been rejected.

The petitioner assails the order passed by the Judicial Magistrate, 1st class, Munger dated 20.09.2012 and has cited various judgments in order to substantiate his contentions:-

He has referred to the case of **Nemai Chandra Chatterjee Vs. The State of Bihar, reported in 2006 (3) PLJR-114** wherein at para-5, this Court has held that the order rejecting the discharge petition, was in a mechanical manner is without application of judicial mind.

The petitioner has further referred to the case of **Manornjan Singh Vs The State of Bihar & Anr., reported in 2008 (1) PLJR- 734** , wherein this Court has taken the same view that the Magistrate should not simply reject the petition for discharge in a mechanical manner just because the Magistrate has

taken cognizance for offence or that in the case diary, there are sufficient evidence for framing of charge and has remitted the matter back with a direction to examine the matter afresh and pass a reasoned order in accordance with law.

Furthermore, the petitioner has referred to unreported judgement in the **case of Aranya and others Vrs. State of Bihar and others dated 02.12.2013** wherein when the Magistrate had rejected the petition filed under Sections 245 of the Code of Criminal Procedure. This Court held that the petitioner had filed an exhaustive petition for discharge but this application of independent judicial mind, the Magistrate has mechanically discharged by non speaking order which Can not be sustained in law.

Learned counsel for the petitioner has further referred to another Judgment in the case **of Pradeep Kumar Verma Vs. State of Bihar & Anr. reported in AIR 2007, S.C. 3059**, which was a case under Section 498A of the Indian penal Code. It was a case in which on mere reading of the F.I.R., showed that no offence was made out.

Learned counsel for the State Bank of India on the other hand submitted that in the order rejecting discharge petition the Judicial Magistrate 1st class, Munger has taken into



consideration the entire case record and has come to a cogent finding, specially because the petitioner is a named accused in the F.I.R., charge sheet has been submitted. Certain paragraphs of the case diary have sufficient evidence against the petitioner that it is a case of embezzlement of public money and the learned Chief Judicial Magistrate has taken cognizance of the offences under various Sections of Indian Penal Code enumerated above.

All the cases, cited by the learned counsel for the petitioner were cases in which the Magistrate has passed orders in a most mechanical and cryptic manner without application of independent judicial mind. But in the present matter the Judicial Magistrate 1st class, Munger, has taken into consideration all the aspects with complete application of mind. More so, the petitioner is a named accused in the F.I.R. and allegation is of embezzlement of Rs. . 8, 52, 307/- from a Nationalized Bank which is public money.

Upon consideration of all the aspects and circumstances, this application for quashing of the order dated 20.09.2012 passed by the Judicial Magistrate, 1st class, Munger in connection with Kotwali P.S.Case No. 208/2011/ G.R. No. 944/2011 is, rejected.

The application is accordingly dismissed.

However, the petitioner is at liberty to raise all these issues at the stage of trial.

(Nilu Agrawal, J)

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