

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49674 of 2012

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1. Gudia Kumari D/O Parsuram Sharma R/O Mohalla - Ramdeo Nagar,
Police Station-Siwan Muffsil (Mahadeva), District - Siwan

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kant

For the Opposite Party/s : Mr. Pradeep Nr. Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 25-06-2015

Heard the learned counsel, Mr. Mukesh Kant for the
petitioner and learned A.P.P. for the State.

This criminal miscellaneous application has been filed
by the petitioner for quashing the entire proceeding including the
order dated 30.10.2012 passed by C.J.M., Siwan in Siwan Town
P.S. Case No.173 of 2011 whereby the cognizance under Section
419, 420, 406/34 I.P.C. has been taken against the petitioner.

The prosecution case is that the Branch Manager of
Allahabad Bank, Siwan filed a complaint alleging that two Bank
accounts were opened on the same date in the name of this
petitioner and other Gudia Kumari, D/o Dhrub Manjhi. Since both
the accounts were opened in the name of Gudia Kumari and only
the father's name was different, when this petitioner came to the



Bank for updating her Bank account passbook, because of confusion in the name of both Gudia Kumari the passbook of this petitioner was updated as if she is Gudia Kumari D/o Dhruv Manjhi. Thereafter, this petitioner from 30.12.2010 to 11.05.2011 withdrawn Rs.2,43,250/- from her account. In fact, it was not the amount of the petitioner. The Bank thereafter asked the petitioner to deposit the amount.

The learned counsel for the petitioner submitted that the petitioner has never withdrawn the amount and in fact, the Bank officials fraudulently opened two accounts of two different dates and they have withdrawn the amount. The learned counsel further submitted that without verifying the signatures, the police officer has filed the chargesheet and the court below mechanically took cognizance against this petitioner. Further, the learned counsel submitted that the petitioner is a juvenile and an application has been filed in the court below for transferring the case to the Juvenile Board. The learned counsel submitted that when the other Gudia Kumari complained before the Bank, the Bank officials did not take any action against this petitioner and when case was filed by other Gudia Kumari before Consumer Forum and notice was issued by the Consumer Forum to the petitioner, thereafter, this case was filed by the Bank officials only

to save their skins.

On the other hand, the learned A.P.P. vehemently opposed and submitted that there is direct allegation against this petitioner that she has withdrawn the amount of Rs.2,43,250 and after investigation, the police has found the case to be true. According to the learned A.P.P., it is not the case of the petitioner that she has deposited this amount in her account. She never produced any chit of paper to show that on which date this amount was deposited by her in the account or even by her parents. Because of mistake, on the part of the officers of Bank, the passbook of the petitioner was updated showing the amount of khata of Gudia Kumari, D/o Dhrub Manjhi and this petitioner has withdrawn the amount. So far the minority is concerned, the learned A.P.P. submitted that if she is minor, the Bank account could not have opened individually in her name nor she could have executed the vakalatnama in this criminal miscellaneous application.

Perused the order taking cognizance and the complaint filed by the Branch Manager. There is direct allegation that the petitioner has withdrawn the amount of Rs.2,43,250. It is not the case of the petitioner that the amount is her amount and on such and such date, the amount was deposited by her. If she is

minor and is a student, according to the learned counsel for the petitioner, she should have made a case that this amount was deposited by her parent in her name.

The Hon'ble Supreme Court in the case of **R. Kalyani v. Janak C. Mehta and others, (2009) 1 Supreme Court Cases 516** has held that "High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence. Such a power should be exercised very sparingly. If the allegations made in the F.I.R. disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus."

Now, therefore, here the defence of the petitioner that she has not withdrawn the amount is a fact to be seen ultimately by the Court but for that purpose, this Court while exercising jurisdiction under Section 482 Cr.P.C. cannot examine the evidences meticulously and record a finding of fact.

So far the submission of the learned counsel that the

Bank officials have withdrawn fraudulently is concerned, is also a question of fact based upon the evidences and so far the submission that the Bank officials did not complain earlier is also not a ground for quashing the proceeding because in fact, the source of the amount from which the petitioner deposited the same in her account has not been disclosed nor there is explanation as to how and why the amount was withdrawn.

Further, so far the submission of the learned counsel that the petitioner is a juvenile, the same also is a question to be decided on the basis of the evidences but prima facie, it appears that the vakalatnama has been executed by the petitioner in this criminal miscellaneous case. Further, she has opened the Bank account independently and it is not her case that she was represented before the Bank through her father and if she is minor then wherefrom this amount came in her Bank account is not explained.

In view of the above facts and circumstances of the case, I am not inclined to exercise jurisdiction under Section 482 Cr.P.C. Accordingly, this criminal miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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