IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 36060 of 2014

Arising out of P.S. Case No. -32 Year- 2012 Thana - GANDHIMAIDAN District- PATNA

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Hiranmoy Roy S/o Late Kamal Roy Branch Manager, Housing Department, Finance Corporation Limited (HDFC Ltd.), 2nd Floor, Twin Tower, South Gandhi Maidan, Police Station Gandhi Maidan, District Patna, at present Katurka Niwas, South Gandhi Maidan, P.S. Gandhi Maidan, Patna.

.... Petitioner/s

Versus

The State of Bihar & Anr.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mohan Kumar Singh, Adv.

For the Opposite Party/s: Mr. APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 13-07-2016

The Petitioner seeks quashing of the order of cognizance dated 30.08.2013 passed by the Additional Chief Judicial Magistrate, Patna in Gandhi Maidan P.S. Case No. 32 of 2012.

The case of the Informant is that he had taken housing loan of Rs. 8,00,000/- from the Bank of which the Petitioner was the Branch Manager. The said loan was taken over by State Bank of India, Ara and it paid Rs. 6,67,199/- to the HDFC through a Bank Draft. In addition to the above amount the HDFC demanded Rs. 3411/- from the Informant even though he had paid the said amount. Later, despite having received the entire loan amount on 28.03.2011 the Bank did not issue No Dues Certificate to him nor did it return the document of flat at Patna or unutilized post-dated cheques. Later, the HDFC presented a post-dated cheque of Rs. 10,000/- before the SBI and encashed the same on 08.04.2011 and did not reply despite issued legal notice to him. Under these circumstances, he alleged that the Bank had misappropriated Rs. 10,000/- from his account.

Learned Counsel for the Petitioner submits that even conceding the allegations since he was merely a Branch Manager he could not be vicariously held responsible for any irregularity which had been committed. Further, the Bank refunded Rs. 10,000/- to the Informant as is evident from Annexure-2 on the order of the Sessions Judge, Bhojpur at Ara in anticipatory bail application No. 229 of 2012. Annexure-3 also reveals that the Petitioner had surrendered in Court and was enlarged on bail of Rs. 10,000/- with two sureties of the like amount. Under these circumstances, when the loss has already been made good to the Informant and no criminal offence is made out in the facts of the case the prosecution should be set aside.

On the other hand, Counsel for the Informant disputes the fact of having received the money and also submits that the Petitioner’s bail bond has been cancelled, hence, the application for quashing should not be entertained.

Having considered that even though a lapse may have been committed by the Bank but it is a well-known principle of criminal law that all irregularities are not necessarily an illegality which is criminally culpable and, hence, the entire proceeding including the order of cognizance dated 30.08.2013 passed by the Additional Chief Judicial Magistrate, Patna in Gandhi Maidan P.S. Case No. 32 of 2012 is, hereby, set aside.

The Application stands allowed.

(Anjana Prakash, J.)

Vikash/-

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