

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22133 of 2013

Arising Out of PS.Case No. -32 Year- 2005 Thana -RAJNAGAR District- MADHUBANI

Shailendra Kumar Jha, son of Late Laxmidhar Jha, resident of Village - Pilakhwar,
P.S. - Raj Nagar, District - Madhubani

.... Petitioner

Versus

1. The State of Bihar
2. The Branch Manager, Punjab National Bank, Madhubani Branch, District-
Madhubani

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. Uma Kant Shukla, Adv.
Mr. Shakti Suman Kumar, Adv.
For the Opposite Party/s : Mr. Anand Kishore Chaudhary, A.P.P.
Mr. (Dr.) Pankaj, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 16-09-2016

Heard Sri Uma Kant Shukla, learned counsel , who was
assisted by Sri Shakti Suman Kumar, learned counsel for the
petitioner, Sri Anand Kishore Chaudhary, learned Addl. Public
Prosecutor and Sri Pankaj, learned counsel for Opp.Party no.2/ Punjab
National Bank, Madhubani Branch.

2. The petitioner has invoked inherent jurisdiction of
this Court under Section 482 of the Code of Criminal Procedure with
a prayer to quash an order dated 12.03.2012 passed in Case
no.G.R.346/05 (arising out of Raj Nagar P.S. Case No.32 of 2005).
By the said order, the learned Chief Judicial Magistrate, Madhubani

has taken cognizance of offence under Section 420 of the Indian Penal Code and directed for summoning the petitioner.

3. Short fact of the case is that on the basis of written report submitted by the Incharge Certificate Officer, Madhubani, an F.I.R. vide Raj Nagar P.S. Case No.32 of 2005 was registered for the offence under Sections 406, 420 of the Indian Penal Code against the sole petitioner. It was alleged in the written report of the Incharge Certificate Officer that the petitioner misled the Court. After the F.I.R. was lodged, finally chargesheet was submitted in the year 2012 vide Chargesheet No. 160/2012. After receipt of the chargesheet, the learned Chief Judicial Magistrate has passed order of cognizance, which has been assailed in the present petition.

4. Sri Uma Kant Shukla, learned counsel for the petitioner, by way of referring to F.I.R. itself, submits that a certificate proceeding was initiated against the petitioner by the Punjab National Bank for recovery of meager amount. He submits that the petitioner had taken loan to the tune of about Rs.35,000/- (thirty five thousand) from the Punjab National Bank for running a biscuit factory. However, due to earthquake, the said business was directly affected and, as such, initially he was not in a position to refund the loan amount. Finally, a certificate case was filed by the Punjab National Bank and a certificate case vide Certificate Case No.05/92-93 was



initiated. In the said case, due to non-payment of certificate amount, the petitioner was taken into civil prison. However, it appears that since the period of custody was going to complete, the certificate officer without any rhyme and reason had filed a complaint before the Officer Incharge of Raj Nagar Police Station vide Memo No.55 dated 15.03.2015 for lodging a case against the petitioner. He submits that though from the complaint no offence was made out, even then the police registered F.I.R. An F.I.R. was registered in the year 2005 itself and thereafter the Investigating Officer did not do anything. In the meanwhile, in conciliation proceeding, the petitioner cleared all the outstanding of the Bank and certificate case was dropped vide order dated 23.03.2005 vide Annexure-2 to the present petition whereby a certificate was issued by the Certificate Officer, wherein it has been indicated that in view of recovery of certificate amount, certificate proceeding has been disposed of. It has been argued that though the dispute regarding certificate amount had already come to an end in the year 2005, the police without any investigation in the year 2012 had done formality by way of filing chargesheet. By way of referring to lower court record, he submits that in the lower court record, there is nothing to indicate that after registering the case even a single witness was examined or not. Only in the year 2012, about six paragraphs have been recorded in the case diary and chargesheet was submitted.



He submits that the investigation was conducted in a complete perfunctory manner and the learned Chief Judicial Magistrate in the same manner without looking into the record passed order of cognizance. He further submits that the fact regarding clearance of loan amount is evident from the counter affidavit filed by the Bank. He submits that the Bank in this case on affidavit has said that entire loan amount was already paid long back in the year 2005. The submission of learned counsel for the petitioner to the extent of clearance of loan amount was accepted by Dr. Pankaj, learned counsel for Opp.Party no.2.

5. The learned Addl. Public Prosecutor is also not in a position to say as to whether during investigation any material was collected by the Investigating Officer for chargesheeting the petitioner.

6. Besides hearing learned counsel for the parties, I have also perused the entire record and after going through the same, the Court is satisfied that F.I.R. was lodged in a perfunctory manner and similarly investigation was conducted and the learned Chief Judicial Magistrate too had committed same error and passed order of cognizance.

7. In view of facts and circumstances, particularly the fact that the entire loan amount was already paid prior to filing of

chargesheet, no purpose would be served to allow criminal proceeding in such cases to proceed, rather allowing such proceeding will amount to allowing abuse of the process of the court and, as such, with a view to prevent such abuse, it is desirable to interfere with the impugned order.

8. Accordingly, the order dated 12.03.2012 passed in Case No. G.R.346/05 arising out of Raj Nagar P.S. Case No.32 of 2005 and entire proceeding is hereby set aside. The petition stands allowed.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
CAV DATE	
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