

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44630 of 2013

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1. Manoj Kumar Singh, son of Late Shatrughan Prasad singh, Member, Avinir Sahkari Grih Nirman Samiti, Patna and resident of Kumardih Road, Govindpur, Police Station Govindpur, district Dhanbad (Jharkhand)

.... Petitioner

Versus

1. The State of Bihar
2. Navin Kumar Singh, son of Madheshwar Singh, Assistant Manager, Legal, Bihar State Housing Co-operative Federation Limited, Lalit Bhawan, Bailey Road, Patna, resident of Rajiv Nagar, Police Station Rajiv Nagar, district Patna

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Suraj Narain Yadav, Advocate

For the State : Mr. Satyavrat Verma, APP

For O. P. No. 2 : Mr. Purushottam Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 01-04-2016 Heard learned Counsel for the petitioner,

learned Counsel for the informant and learned Additional

Public Prosecutor for the State.

This application, under Section 482 of the Code of Criminal Procedure, 1973, has been filed seeking quashing of the First Information Report of Shastrinagar Police Station Case No. 326 of 2011, to the extent it relates to the present petitioner, Manoj Kumar Singh, alleging commission of offences punishable under Sections 409 and 420 of the Indian Penal Code.



In the First Information Report, seven persons, who are loanees of the from Bihar State Housing Co-operative Federation Limited, Patna (hereinafter referred to as 'the Federation'), have been arrayed as accused. The petitioner is one of them. Housing loans are said to have been advanced against the accused persons, through separate loan agreements. The Assistant Manager, Legal, of the Federation, namely, Navin Kumar Singh, is the informant of the said case.

From the First Information Report, it appears that the allegation against the petitioner is that he, being the Member of Avinir Sahkari Grih Nirman Samiti Limited (hereinafter referred to as 'the Samiti'), had applied for loan from the Federation. The said application for loan was duly certified by the Secretary of the Samiti.

According to the informant, the Society, through its resolution, dated 05.03.1992, had recommended for sanctioning of loan amount of Rs. 2,00,000/- to the petitioner for construction of a flat at Road No. 1E, New Patliputra Colony, on 29.04.1992, and accordingly the Federation sanctioned the loan amount of Rs. 1,00,000/- on 29.04.1992 and again of Rs. 1,00,000/- on 23.06.1993, which was released in favour of the petitioner in three instalments of Rs. 40,000/-, Rs. 60,000/- and Rs. 1,00,000/-, on 08.05.1992, 15.12.1992 and 12.11.1993,



respectively. The petitioner is said to have represented to the Federation before sanction and disbursement of loan amount that he would abide by the conditions of loan agreement and would repay the loan amount along with applicable interest accordingly. It also appears from the First Information Report that the land, in question, was mortgaged in favour of the Federation and a tripartite deed of security was executed by the petitioner, the Federation and the Society for advancement of the said loan. It is alleged that the petitioner failed to repay the loan amount as he had, from the very beginning, an intention not to repay and discharge the liability of loan. With the allegation that till the date of lodging of the First Information Report, on 18.12.2011, the sanctioned and disbursed loan amount had not been repaid by the petitioner or the Society, the informant filed the First Information Report on 18.12.2011.

Learned Counsel appearing on behalf of the petitioner has submitted that no offence under Section 409 or 420 of the Indian Penal Code is made out even if the allegations, as contained in the First Information Report, are treated to be true on its face value. He submits that the sole allegation which has been made against the petitioner is his failure to repay the loan amount with interest. According to him, there is no element of criminal breach of trust in the allegation made in the First Information Report

inasmuch as it cannot be said that the petitioner dishonestly misappropriated any amount entrusted to him within the meaning of Section 405 of the Indian Penal Code.

I find substance in the submission made on behalf of the petitioner. Failure to repay the loan amount cannot, per se, constitute an offence under Section 406 or Section 409 or Section 420 of the Indian Penal Code. Mere reference in the First Information Report that the petitioner had dishonest intention from the very beginning will not constitute such offence. Apparently, it is purely a civil dispute between the petitioner and the Federation, relating to non-payment of loan amount.

Learned Counsel for the petitioner appears to be right in his submission that lodging of the First Information Report with the allegations, as contained therein, is an abuse of the process of law and the Court.

I do not find much substance in the submission made on behalf of the informant that since the petitioner failed to repay the loan amount, he can be said to have committed an offence under Section 409 or 420 of the Indian Penal Code.

Accordingly, this application is allowed. The First Information Report of Shastrinagar Police Station Case No. 326 of 2011 and entire proceeding arising out of the said

Shastrinagar Police Station Case No. 326 of 2011 is
quashed.

Prabhakar Anand/-

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(Chakradhari Sharan Singh, J.)