# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Miscellaneous No.24804 of 2013**

Arising Out of PS.Case No. -45 Year- 2006 Thana -BAUNSI District- BANKA

======================================================

Rajesh Kumar Sah son of Pyarelal Sah resident of Village-Dalia, PS-Baunsi, Distt-Banka.

.... .... Petitioner/s

Versus

1. State of Bihar
2. Shri Rajendra Paul son of not known, Branch Manager, U.C.O. Bank, Branch Baunsi, Distt-Banka.
3. Branch Manager, U.C.O. Bank, Branch Baunsi, Distt-Banka.

.... .... Opposite Party/s

======================================================

**Appearance :**

For the Petitioner/s : Mr. B.P. Pandey, Sr. Adv
Mr. P.K. Sinha, Advocate
For the Opposite Party/s : Mr. Shailendra Kumar 2 (APP)
For the UCO Bank : Mr. Ranjit Kr. Pandey, Advocate

======================================================

***CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI***

ORAL ORDER

4 12-05-2016 Heard learned counsel for the petitioner, learned counsel representing UCO Bank as well as learned APP for the State.

2. Petitioner is aggrieved by an order dated 22.04.2013 whereby and whereunder a prayer advanced under Section 239 Cr.P.C. has been rejected by the learned lower court relating to G.R. No. 448/2006.

3. It is evident that spouses have got independent accounts in the branch of UCO Bank, Banka of which the informant happens to be the Branch Manager. They independently deposited Rs. 10,000/- on specified date which was interpolated as Rs. 1,10,000/- and then thereafter, succeeded in withdrawing the same. It has also been disclosed that husband is availing C.C.A.

upto 8 Lakhs.

4. Petitioner is husband. Wife has not come up, though both are being prosecuted.

5. It has been submitted on behalf of the petitioner that it happens to be a bona fide mistake which could be perceived from the conduct of the petitioner who, just after coming to know about the same, deposited the amount with interest. Furthermore, it has also been submitted that petitioner carries cash-credit facility. Therefore, even accepting for an argument’s sake but not admitted that the amount was withdrawn, that was not going to axe upon the interest of the bank nor it could be said that it was a result of fraudulent action as amount so withdrawn happens to be within limit of C.C.A. Furthermore, it has also been submitted that as the amount along with interest had already been deposited, therefore, bank has got not grievance and in the aforesaid background framing of charge happens to be misuse of law.

6. Learned counsel representing the bank has submitted that they still carry grievance against the petitioner and his wife on account of their fraudulent activities.

7. Even though, the amount along with interest had already been deposited and for that Annexure-4, a certificate has been issued at the end of bank, that is not going to exonerate the

petitioner for the present as the case of temporary embezzlement as well as fraudulent act wherein interpolation was made followed with fraudulent withdrawal.

8. Consequent thereupon, the instant petition is found non maintainable and is, accordingly, rejected.

9. However, it is made clear that petitioner will be at liberty to substantiate his plea during trial over his bona fide conduct.

**(Aditya Kumar Trivedi, J)**

perwez

| U | | T | |
|---|---|---|---|