

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11995 of 2014

Arising Out of PS.Case No. -564 Year- 2004 Thana -KATIHAR District- KATIHAR

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1. Dharendra S/O Late Parmeshwar Prasad Singh Resident Of Mohalla - Anandpuri,
P.O. Bhattha Bazar, P.S. K. Hat, District - Purnea

.... Petitioner/s

Versus

1. The State Of Bihar

2. Krishna Mohan Gupta S/O Shri Kameshwar Prasad Gupta Resident Of Ram
Nagar, B.S. College Road, P.S. Town, District - Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prakash Srivastava Anu Priyadarshni Mr. Navin Anand
For the Respondent	:	Mr. Vinay Ranjan
For the State	:	Mr. G.P.Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 23-08-2017

This is application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 25.10.2013 passed by the learned Chief Judicial Magistrate, Katihar in G.R. No. 1879 of 2004 arising out of Katihar Town P.S. Case No. 564 of 2004. The learned court below finding prima facie case for the offence under Sections 406, 420 and 120-B of the Indian Penal Code ordered for issuance of summons against the petitioner and other co-accused.

2. Heard the learned counsel for the petitioner and the



learned APP for the State.

3. The facts in brief is that the Opposite Party No. 2 lodged an F.I.R. with S.H.O. of Katihar Police Station alleging inter alia that on 07.08.1999, a Cooperative Society, namely, Punjab National Bank Karamchari Bachat Evam Swavlambi Sahkari Samiti was constituted. The said Samiti continued till 28.07.2004 and thereafter, the office was locked. The office bearers of the said Cooperative Society defalcated an amount of Rs. 1, 10, 00, 000/-, which was deposited by several consumers. The petitioner was the president of the said Society during the relevant period.

4. The learned counsel for the petitioner submits that the petitioner was the president of the said Society, but on account of his transfer, he resigned from the post of president on 26.04.2002 and he joined at Muzaffarpur on 06.05.2002. His joining was confirmed by the Bank. The said Cooperative Society issued a no dues certificate and so, the petitioner cannot be held liable for any defalcation, which allegedly occurred after his resignation. The allegation of cheating and committing breach of trust is vague and no offence under Section 420 or 406 of the Indian Penal Code is made out. The learned Magistrate has not considered the materials on record properly and passed the impugned order in mechanical manner and so, impugned order is fit to be quashed.



5. The learned APP for the State, on the other hand, opposed the submission.

6. On perusal of F.I.R. and impugned order, I find that the petitioner was admittedly the president of the Punjab National Bank Karamchari Bachat Evam Swavlambi Sahkari Samiti Ltd. and he remained as president for about more than two years. A large number of account holders deposited money during the tenure of this petitioner and also subsequent to the transfer of the petitioner from Katihar. The informant and account holders were assured for the payment after the maturity, but all of a sudden the office of the said Cooperative Society was locked and all the office bearers allegedly escaped from their liability of paying the maturity amount. The learned Magistrate after going through the materials in case diary has found prima facie case true for the offence under Sections 420, 406 and 120-B of the Indian Penal Code. The defence of the petitioner that he was transferred and had joined at different places in the year 2002 cannot exonerate him from the offence, which were committed during his tenure. His defence has to be considered at the time of trial. It is well settled that at the time of taking cognizance, the court is required to see as to whether prima facie case is made out or not.

7. In this view of the matter, I do not find any merit in the



submission of the learned counsel for the petitioner. This application is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
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