

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13422 of 2014

Arising Out of PS.Case No. -500 Year- 2010 Thana -COMPLAINT CASE District- ARRARIA

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1. Birendra Kumar Singh, Son of Late Nathai Singh Branch Manager of Bihar State Financial Corporation, Purnea Branch, P.S.- K. Hat, At And District- Purnea
 2. Jai Prakash Sinha, Son of Sri Chhotelal Jee
 3. Ashok Kumar, Son of Late Rajeshwar Prasad Srivastava Petitioners No. 2 And 3 Both Deputy Manager, Bihar State Financial Corporation, Purnea Branch, P.S.- K. Hat, At And District- Purnea.

.... Petitioners

Versus

1. The State of Bihar
2. Nueshaba Sabbir Daughter Of Late Shabir Alam Resident Of D.D. Road, Ward No. 16, At And P.S.- Forbesganj, District- Araria.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Anil Jayaswal, Advocate, Mr. Anjana Bhagat, Advocate,
For O.P. No.2	:	Mr. Rajesh Kumar, Advocate,
For the State	:	Mr. Rana Randhir Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 27-11-2017

Heard learned counsel for the petitioner, learned counsel for O.P. No.2 and also learned A.P.P. appearing on behalf of State.

2. This application has been filed under Section 482 of the Cr.P.C. against the order dated 09.07.2013 passed in Compliant Case No. C – 500 of 2010, whereunder the Court of Chief Judicial Magistrate, Araria summoned the six accused out of seven accused named in the compliant petition, including the petitioners, on inquiry, under Section 204 Cr.P.C. finding prima facie case for the offence under Sections 147, 323, 341, 452/34 of Indian Penal Code.

3. The fact leading to this application is that O.P. No. 2 Neushaba Sabbir, daughter of late Shabir Alam resident of D.D. Road,



Ward No. 16 P.S. Forbesganj, District-Araria is that on 25.02.2010, while she was alone in her house then petitioner being the officials of Bihar State Financial Corporation, Branch Purnia, Surendra Kumar, Peon Shambhu Goel and Sagar Goel along with deputed Magistrate and Police officials reached near the campus of her house and started breaking the lock of her main gate. When she enquired about breaking of lock then she was abused on the order of petitioner No.1 Birendra Kumar Singh. On receiving the information about the said matter, Pradeep Lunia, brother of O.P. No. 2, came and also made protest saying that without prior information why the lock was broken then on the order of petitioner Nos.1 to 3 other accused assaulted her brother by fist and slaps and took signature and thumb impression on plain paper. Thereafter, all the accused entered in the campus and reached behind the back portion of the house. The cause of occurrence is that M/s Sheen Ceramics Pvt. Ltd. mortgaged/hypothecated the land situated in the campus behind the house to the Bihar State Financial Corporation and only to take possession of the said land, the accused forcibly broken the lock of the main gate and entered inside the campus.

4. Learned counsel appearing on behalf of petitioners submits that petitioner Nos. 1 to 3 were posted as Branch Manager and Deputy Managers at Bihar State Financial Corporation, Branch Purnia and they have falsely been implicated in this case only to give undue pressure. Further submission is that, in fact, Sabbir Alam, father of O.P. No.2 being the promoter of M/s Sheen Ceramics Pvt. Ltd had taken loan to Bihar State Financial Corporation, Purnia Branch, but the installment of the loan was not paid. Accordingly, Managing Director of Bihar State



Financial Corporation, Patna issued auction sale order under Section 29 of the State Financial Corporation Act on 30.06.2009 for the auction sale of mortgaged/hypothecated assets of M/s Sheen Ceramics Pvt. Ltd. in favour of one Smt. Kamini Goel, W/o Shri Shambhu Goel, D.D. Road, P.O. Forbesganj, District-Araria for consideration of Rs. 33 Lakhs and the copy of the said order was communicated to M/s Sheen Ceramics Pvt. Ltd. and other authorities, which would appear from Annexure-2 to the petition. Thereafter, on 10.08.2009, the Managing Director of Bihar State Financial Corporation, Patna issued another order under Section 29 of Bihar State Financial Corporation empowering the Branch Manager of the Bihar State Financial Corporation, Purnia Branch to entered in the premises of M/s Sheen Ceramics Pvt. Ltd. to take over the possession of the mortgaged/hypothecated property and hand over the possession to the purchaser Smt. Kamini Goel, which would appear from Annexure-3 to this petition. The petitioner No.1 being the Branch Manager of Bihar State Financial Corporation, Purnia Branch on 26.08.2009 wrote two letters one to District Magistrate, Araria for deputing an Executive Magistrate and another letter to the S.P. Araria for deputation of armed forces to take over the possession of the aforesaid M/s Sheen Ceramic Pvt. Ltd. Thereafter, petitioners along with other officials of Bihar State Financial Corporation, Purnia Branch reached at the site to take over the possession of the mortgaged/hypothecated property but due to disturbance created by Farahat Sabir, brother of O.P. No.2 the possession could not be taken. Thereafter, again on 18.12.2009, the petitioner No. 1 being the Branch Manager, wrote two separate letters one to the D.M. Araria and another to the S.P. Araria to provide a



Magistrate and Police forces along with lady constables for the said purpose, then SDO, Forbesganj, Araria deputed to BDO, Forbesganj as Magistrate to assist the Branch Manager, BSFC, Purnia Branch. Thereafter, the petitioners being the officials of the Bihar State Financial Corporation, Purnia Branch along with deputed Magistrate and Police officials reached on the spot on 25.02.2010 and possession was taken over of the mortgaged/hypothecated property. The Complainant-O.P. No.2, who is the daughter of Late Sabir Alam promoters of M/s Sheen Ceramic Pvt. Ltd. lodged the present Compliant Case No. C-500 of 2010 to give undue pressure in vengeance.

5. Learned counsel appearing on behalf of O.P. No.2 has not denied about mortgaging the property behind the house of O.P. No.2 in favour of B.S.F.C. at the time of taking the loan by the father of O.P. No.2 as promoter of M/s Sheen Ceramic Pvt. Ltd. and also not disputed Annexures 2 and 3 letters as issued by the Director, Bihar State Financial Corporation, Patna. But his contention is that without demarcating the mortgaged property, the petitioners being the officials of Bihar State Financial Corporation, Purnia Branch along with Magistrate and Police officials and auction purchaser reached in the campus of O.P. No.2 and created nuisance by breaking the lock of the premises.

6. Admittedly, the petitioners are the then officials of Bihar State Financial Corporation, Purnia Branch and property situated behind the house in the campus of O.P. No.2 was mortgaged/hypothecated by M/s Sheen Ceramics Pvt. Ltd belonging to father of O.P. No.2. Annexure 2 and 3 order dated 30.06.2009 and 10.08.2009 clearly indicate that due to non payment of loan as taken by



the father of O.P. No.2 as promoter of M/s Sheen Ceramics Pvt. Ltd. mortgaged property situated in the campus of O.P. No.2 was auctioned under Section 29 of State Financial Corporation informant Mrs. Kamini Goel and Branch Manager BSFC Branch Purnia was authorized to take possession of mortgaged property. As such, summoning of accused-petitioners being the officials of B.S.F.C. Branch Purnia for offence under Sections 147, 323, 341 and 452/34 of Indian Penal Code appears to be illegal.

7. In the result, this impugned order dated 09.07.2013 summoning the accused-petitioners, on enquiry, under Section 204 Cr.P.C. finding prima facie case under Sections 147, 323, 341 and 452/34 of Indian Penal Code by the Court of Chief Judicial Magistrate, Araria in Complaint Case No. C- 500 of 2010 is illegal and the same is hereby quashed in respect to the petitioners. Accordingly this application is allowed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	06.12.2017
Transmission Date	06.12.2017

