

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15756 of 2014

Arising Out of PS.Case No. -2504 Year- 2013 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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1. Mukesh Pathak Son Of Late Pujan Pathak
2. Dabllu Pathak, Son Of Sudhir Pathak. Both R/O Village- Amawa Nakchhed,
P.S.- And District- Gopalganj

.... Petitioner/s

Versus

1. The State Of Bihar
2. Raktan Ram S/O Raghuni Ram, R/O Village- Karariya, P.S. And District-
Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Prasad Sinha, Advocate
For the Opposite Party/s : Mr. Madhuri Lata, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date: 24-08-2017

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of an order dated 21.12.2013 passed by the learned Sub-Divisional Magistrate, Gopalganj in Complaint Case No. 2504 of 2013 corresponding to Tr. No. 4926 of 2014 whereby the learned court below took cognizance against the petitioner under Sections 420, 406/34 of the Indian Penal Code.

The brief facts of this case is that at the instance of these petitioners the complainant put his thumb impression over the form which pertains to getting loan from the government for purchasing the cattle and thereafter the petitioners directed the complainant to go to the D.D.C. to enquire about his application from where he got information that Rs. 30,000/- has been sanctioned to him as a loan for doing the business. The petitioners in connivance of the Bank employee took thumb impression of the complainant over the



withdrawal slip to withdraw Rs. 29,750/- and accordingly, grabbed the entire money of the complainant.

Learned counsel for the petitioners has submitted that petitioners have not committed any offence as alleged in the complaint. As a matter of fact, the alleged occurrence took place in the year 2010 and the present case has been lodged in the year 2013 after a lapse of three years which creates doubt over the prosecution version. Further, the loan has been sanctioned by the Bank under the Government Scheme and the same has been disbursed in favour of loanee by cheque and the complainant has not submitted even a single documentary evidence in support his allegation. Therefore, no case under Sections 420 and 406/34 of the Indian Penal Code is made out against the petitioners but the court below without appreciating the material on record has taken cognizance in a routine manner. On the above ground, it is submitted that the cognizance order is bad in law and is fit to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners and the court below after going through the materials available on record has found a prima facie case made out against the petitioners and rightly taken cognizance for offence under Sections 420, 406/34 of the Indian Penal Code. Therefore, the order taking cognizance does not require any interference.

From perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the petitioners. All the submissions made at Bar relates to disputed question of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 482 Cr.P.C. Only a prima facie satisfaction of the Court about the existence ground to proceed with the matter is required. At this stage, only prima facie case is to be seen in the light of the law laid



down by the Supreme Court in cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192, Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283*** and recently in ***A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348.*** The submission made by the learned for the petitioner call for adjudication on pure question of fact which may be adequately gone into by the trial court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defense of the accused cannot be considered at this stage. Moreover, the petitioner has got a right of discharge through a proper application for the said purpose and he is free to take all the submission in the said discharge application before the trial court. The prayer for quashing the order taking cognizance is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
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