IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32227 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

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1. Dr. Poonam Sinha @ Poonam Singh, wife of Rajeev Sinha, resident of Mohalla- V.C. Lane (Girja Nivas), Mithanpura, P.S.- Mithanpura, District - Muzaffapur

.... Petitioner/s

Versus

1. The State of Bihar,
2. Sri Prakash Kumar Sinha, son of late Mahendra Prasad, resident of mohalla - Amgola (Asmriti), New Gyan Kala Kendra School, P.S.- Town, District - Muzaffapur

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Manindra Kishore, Advocate
For the Opposite Party/s : Mr. Suresh Pd. Singh No.1, Advocate
Ms. Kumari Rashmi, Advocate
Mr. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT
Date: 17-02-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 06.06.2013 passed by the 6th Additional Sessions Judge, Muzaffarpur, in Criminal Revision No.19 of 2012, as well as the order dated 21.01.2012 passed by the Chief Judicial Magistrate, Muzaffarpur, in Complaint Case No.C-2312 of 2008/Tr. No.657 of 2012 whereby the revision filed by the petitioner against the said order of the Chief Judicial Magistrate, Muzaffarpur, under Section 245 Cr. P. C. was dismissed and it is held that there is no infirmity in the order of the Chief Judicial Magistrate, Muzaffarpur, by which discharge petition filed by the petitioner has been rejected.

2. The prosecution case as per the complaint, in brief, is that complainant had family relationship with the accused persons. The accused persons (petitioner and her husband) had taken loan for solemnizing marriage of their daughter in the year 2006 from different persons on interest. The accused persons were unable to make payment of the interest amount and the principal amount remained the same. In the month of February, 2008, the accused persons came to the complainant and requested for loan of rupees seven lacs on the promise that they will return the same in 3-4 months. It is alleged in the Complaint Petition that the petitioner is a Lecturer in Bihar University and she is likely to get rupees four lacs as arrear of her salary and the rest amount would be arranged from other sources. The complainant gave rupees seven lacs on such assurance to the accused persons at her residence after withdrawing from LIC. The accused persons gave one cheque bearing no.AS/98-294915 dated 10.03.2008 of UCO Bank, Club Road, Muzaffarpur, of rupees seven lacs as guarantee. It is further alleged that rupees seven lacs was received by the husband of the petitioner, who handed over the money to the petitioner. The petitioner kept the money in her bag and handed over the cheque, which was signed by her husband, to the complainant. The accused persons did not return the money after three months. Thereafter, the complainant presented the cheque for its payment with consent of this petitioner and her husband in the first week of August, 2008, but the same was dishonoured by the bank. The complainant sent legal notice to the accused persons but they did not return the money and thereafter the case was filed. The complainant has alleged that the petitioner and her husband had made the habit of cheating persons in such a manner. Two other cases have also been filed against them; one by Sri Braj Kishore son of Sri Prabhu Narayan Thakur vide Complaint Case No.448 of 2008 and another by Mahesh Das son of late Rambriksh Das vide Complaint Case No.791 of 2008.

3. Learned Magistrate after examining the complainant and witnesses during enquiry under Section 202 Cr. P. C. found *prima facie* case against the petitioner and her husband for the offence under Section(s) 420 Indian Penal Code and Section 138 of the Negotiable Instrument Act.

4. Four witnesses were examined on behalf of the complainant before Charge under Section 244 Cr. P. C. The petitioner along with her husband filed a petition for discharge under Section 245 Cr. P.C. on 18.05.2011, which was rejected by the Chief Judicial Magistrate, Muzaffarpur, on 21.01.2012. Thereafter, the petitioner filed Criminal Revision No.19 of 2012 before the Sessions Judge, Muzaffarpur, which was dismissed by the 6^{th} Additional Sessions Judge, Muzaffarpur, by order dated 06.06.2013.

5. It has been submitted on behalf of the petitioner that none of the witnesses examined before Charge have alleged any specific overt act against the petitioner. The Complaint Petition also does not disclose any overt act against this petitioner. This petitioner has not issued any cheque under her signature. The cheque was issued by her husband, Rajeev Kumar Sinha, and continuance of criminal proceeding against this petitioner is abuse of process of the Court.

6. Counsel for the petitioner has relied on the judgment of this Court in the case of ***Md. Sobil Vs. The State of Bihar*** reported in ***2016(4) PLJR 532*** in support of his submission.

7. On the other hand, counsel for the Opposite Party No.2 has submitted that there is no illegality in the impugned order. The learned Magistrate after appreciating the evidence of the witnesses recorded under Section 244 Cr. P. C. has rejected the petition filed for discharge. It has further been submitted that the instant quashing application has been filed under the garb of 482 Cr. P. C. as second revision since the first revision filed by the petitioner has already been dismissed by the 6th Additional Sessions Judge, Muzaffarpur.

8. Having heard the parties, perusal of the allegation in the Complaint Petition as well as certified copy of the statement of the witnesses recorded during enquiry and the evidence of the witnesses recorded before Charge, which have been filed on behalf of the petitioner, this Court finds that there is specific allegation against the husband of the petitioner, Rajeev Kumar Sinha, in the Complaint Petition of receiving amount of rupees seven lacs from the complainant-Opposite Party No.2 and issuing cheque of rupees seven lacs drawn on UCO Bank, Club Road, Muzaffarpur, dated 10.03.2008, in favour of the complainant.

9. The allegation against this petitioner in the Complaint Petition is that her husband after receiving the amount of rupees seven lacs gave the same to this petitioner, who put the same in her bag and she gave the cheque drawn by her husband, Rajeev Kumar Sinha, to the complainant after taking out the same from her bag.

10. The complainant, Pramod Kumar Singh, has been examined before Charge as CW 4. He has proved the cheque dated 10.03.2008 issued under the signature of Rajeev Kumar Sinha, which has been marked as Ext.5. This witness has further stated in para 3 of his evidence before Charge that he gave rupees seven lacs on 10.03.2008 in cash to Rajeev Kumar Sinha, who gave him cheque dated 10.03.2008 under his signature. Similarly, other witnesses, namely, Dheeraj Kumar Verma (CW 1) and Ratan Ghosh (CW 3) have stated that money was given by the complainant on 10.03.2008 to Rajeev Kumar Sinha, who gave the same to this petitioner and issued a cheque of rupees seven lacs to the complainant.

11. Shankar Kumar Mishra, CW 2, has stated in his evidence that Poonam Sinha gave cheque of rupees seven lacs under her signature, which is apparently contradictory statement from the statement of other witnesses.

12. The essential ingredients of Section 420 Indian Penal Code are :

(i) Cheating as defined under Section 415 of the Indian Penal Code;

(ii) Dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

(iii) *Mens rea* of the accused at the time of making the inducement.

13. In the instant case, as per the allegation made in the Complaint Petition and the statement of the witnesses recorded before Charge, there is nothing on record to show that this petitioner had dishonest intention at the time of taking loan by her husband. Similarly, there are no allegations as to cheating or the dishonest intention of the petitioner in retaining the money in order to have wrongful gain to her or causing wrongful loss to the complainant. Excepting the bald allegation that the husband of this petitioner after receiving the amount from the complainant gave the same to her and she kept the same in her bag, there is no other allegation against this petitioner either in the Complaint Petition or in the statement of the witnesses recorded before Charge.

14. Similarly, it is apparent from the Complaint Petition as well as statement of the complainant himself recorded before Charge as CW 4 that cheque of rupees seven lacs was issued to the complainant under the signature of the husband of this petitioner, namely, Rajeev Kumar Sinha. There is simply vague allegation against this petitioner that she took out the cheque from the bag and gave the same to her husband. This fact was also taken note of by the learned 6th Additional Sessions Judge, Muzaffarpur, in Cr. Revision No.19 of 2012. The learned 6th Additional Sessions Judge, Muzaffarpur, has mentioned in the impugned order dated 06.06.2013 that the cheque, in question, was issued only by the husband of the petitioner, namely, Rajeev Kumar Sinha, and it belongs to his own account. The cheque return memo of the UCO Bank shows that the cheque was dishonoured due to insufficient fund.

15. Therefore, the very ingredients of Section 420 Indian Penal Code and Section 138 of the Negotiable Instrument Act are not attracted against this petitioner on the basis of the allegation made in the Complaint Petition and the evidence of the witnesses recorded during enquiry under Section 202 Cr. P.C. as well as before

Charge.

16. Therefore, this Court is of the view that continuance of the criminal proceeding against this petitioner will be abuse of the process of law. The order dated 06.06.2013 passed by the 6th Additional Sessions Judge, Muzaffarpur, in Criminal Revision No.19 of 2012, as well as the order dated 21.01.2012 passed by the Chief Judicial Magistrate, Muzaffarpur, in Complaint Case No.C-2312 of 2008/Tr. No.657 of 2012 rejecting petition filed under Section 245 Cr. P. C., so far the petitioner is concerned, suffers from illegality.

17. Accordingly, the order dated 06.06.2013 passed by the 6th Additional Sessions Judge, Muzaffarpur, in Criminal Revision No.19 of 2012, as well as the order dated 21.01.2012 passed by the Chief Judicial Magistrate, Muzaffarpur, in Complaint Case No.C-2312 of 2008/Tr. No.657 of 2012 along with entire criminal proceeding against the petitioner is hereby quashed.

18. The application stands allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	**AFR**
CAV DATE	**02-02-2017**
Uploading Date	**18-02-2017**
Transmission Date	**18-02-2017**