

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18393 of 2014

Arising Out of PS.Case No. -773 Year- 2012 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Ashok Kumar, son of Krishna Prasad, resident of Mohalla- Jakkanpur, P.S- Gardanibag, District- Patna, then posted as Manager, Punjab National Bank, Bind.
 2. Surjit Kumar, Son of Kashi Prasad, resident of Latma Road, P.S- Hatia, District- Ranchi, then Posted as Clerk, Punjab National Bank, Bind, P.S- Bind, Distt- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. Nand Kishore Prasad, son of late Laxmi Prasad, resident of village Jahana, P.S- Bind, District- Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Suryakant Kumar, Advocate.

For the Opposite Party/s : Mr. Braj Kishore Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 08-11-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 07.12.2013 passed by the learned Judicial Magistrate, 1st Class, Bihar Sharif (Nalanda) in connection with Complaint Case No. 773C of 2012 by which the learned Magistrate after enquiry has found prima facie case against petitioner No. 1 for the offence under Sections 352, 403, 504, 120B of the Indian Penal Code and against petitioner No. 2 for the offence under Sections 403 and 120B of the Indian Penal Code.



2. The petitioners are the Branch Manager and Clerk of Punjab National Bank of Bind, Distt. Nalanda. The complainant has alleged in the complaint petition which was registered on the basis of protest petition that MOIL compnay sent a Cheque bearing No. 136550 dated 11.12.2010 for Rs.51,000/- in the name of the complainant drawn on State Bank of India, by registered post at the home address of the complainant, but the same was not received by him. It is alleged that on enquiry, complainant came to know that the said Cheque has been encashed from the Soh Sarai Branch of Punjab National Bank. The complainant met the petitioner No. 1 who told him that payment has already been made to Nand Keshwar Prasad @ Nand Kishore Prasad, son of Lalo Mahto, who is resident of complainant's village. The complainant alleged that the aforesaid payment was made to Nand Keshwar Prasad @ Nand Kishore Prasad in collusion with the Post Master of Badi Malama Post Office and the said cheque was credited in the account of Nand Keshwar Prasad @ Nand Kishore Prasad with the help of petitioner No.1. The complainant lodged case in Police Station. The police submitted Final Form and, thereafter, the complainant filed protest petition dated 19.8.2011, on the basis of which, the instant complaint was registered. It is mentioned in the protest-cum-complaint petition that on 19.8.2011, when accused persons, came to know, about lodging of the



criminal case, they transferred Rs.51,000/- in the account of the complainant, from the account of Nand Keshwar Prasad @ Nand Kishore Prasad. Earlier also a Cheque of Rs.12,000/- was encashed by Nand Kishore Prasad in his account and subsequently, the same was transferred to the complainant and complainant was informed about this fact on 12.9.2011 by a letter.

3. Heard learned counsel for the petitioners and learned counsel for the State.

4. Learned counsel for the petitioners has submitted that name of the complainant and name of Nand Keshwar Prasad @ Nand Kishore Prasad in whose account the money has been credited, are same. The cheque deposited by Nand Keshwar Prasad @ Nand Kishore Prasad in his account in Punjab National Bank, Sohsarai, was due to bona fide mistake accepted and the amount was credited in his account after clearance.

5. The petitioner No. 1 is Branch Manager. He has no role in accepting or clearing the cheque. Similarly, the petitioner No. 2 is working as Clerk. He was also not attached with the work of receiving and clearing the cheque. The cheque was delivered wrongly by the Post Office to Nand Keshwar Prasad @ Nand Kishore Prasad. The said Nand Keshwar Prasad @ Nand Kishore Prasad committed fraud with the Bank by depositing the same in his account and on



bona fide belief, the Bank after clearance of the cheque, credited the amount in account of Nand Keshwar Prasad @ Nand Kishore Prasad.

6. The learned counsel for the petitioner has further submitted that subsequently, after lodging of the instant case, the petitioner came to know about the mistake committed by the Bank and, thereafter, the amount which was credited to the account of Nand Keshwar Prasad @ Nand Kishore Prasad along with interest. was withdrawn from his account, and the same was credited in the account of the complainant. The petitioners have annexed photocopy of transfer receipts as well as the statement of Bank accounts (Annexure-4 series).

7. From perusal of the record, it appears that the amount of Rs.51,000/- along with interest has been credited in the account of the complainant on 10.8.2011, after the same having been transferred from the account of Nand Keshwar Prasad @ Nand Kishore Prasad.

8. Learned counsel for the petitioners has pointed out Annexure-4 series which is the statement of the account of the complainant wherein it is clearly mentioned that amount of Rs.51,000/- along with interest of Rs.2,414/- has been deposited and the same was shown to be credited in the account of the complainant.

9. Notices issued to the opposite party No. 2 were



validly served but he did not appear before this Court.

10. From the statement made in the complaint petition itself it would appear that the amount of the Cheque along with interest has been credited in the account of the complainant after transferring the same from the account of Nand Keshwar Prasad @ Nand Kishore Prasad since the same has wrongly been credited in his account as the name of both the persons are same. The accused Nand Keshwar Prasad @ Nand Kishore Prasad has deposited the cheque in the Bank intentionally knowing that the aforesaid cheque does not belong to him.

11. The petitioners have after coming to know of such bona fide mistake, transferred the aforesaid amount along with interest from the account of Nand Keshwar Prasad @ Nand Kishore Prasad and credited the same in the account of the complainant which would be apparent from Annexure-4 series.

12. The complainant has initially lodged case before the police and police after investigation submitted Final Form in the case as lack of evidence.

13. The court below has after accepting the Final Form, on the basis of protest petition, proceeded for enquiry, treating the protest petition as complaint and after holding enquiry found *prima facie* case against these petitioners by the impugned order for



the offence under Sections, 403, 120B 352 and 504 of the Indian Penal Code.

14. This Court on the basis of materials discussed above, come to the conclusion, that there is no ingredient of offence under Sections 352, 403, 504 and 120B of the Indian Penal Code in this case against the petitioners.

15. Therefore, this Court is of the view that the impugned order dated 07.12.2013 passed by the court below in respect of these petitioners is not in accordance with law.

16. Accordingly, the impugned order dated 07.12.2013 passed by the learned Judicial Magistrate, 1st Class, Bihar Sharif (Nalanda) in connection with Case No. 773C of 2012 along with entire Criminal Proceedings against the petitioners is hereby quashed.

17. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01/12/2017
Transmission Date	01/ 12/2017

