IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33904 of 2014

Arising Out of Case No. -416 Year- 2014 Thana -KHAGARIA COMPALINT CASE District- KHAGARIA

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Manoj Prasad Singh, son of Late Ram Khelawan Prasd Singh, resident of village- Sharmera, P.S.- Sharmera, Distrit- Nalanda at present posted as Branch Manager, State Bank of India, Parbatta Branch, P.S.- Parbatta, District- Khagaria.

.... Petitioner/s

Versus

1. State of Bihar
2. Krishnadeo Singh, son of late Awadh Narayan, Resident of village- Temtha, Ranka, P.S.- Parbatta, District- Khagaria.

.... Opposite Party/s

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Appearance :
For the Petitioner/s :
For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 06-10-2017

Heard learned counsel for the petitioner and learned counsel for the State.

2. Petitioner seeks quashing of order dated 05.05.2014 passed by the A.C.J.M., Khagaria in Complaint Case No. 416C of 2014 thereby taking cognizance of offence under Sections 406 and 420 of the Indian Penal Code.

3. Brief fact of this case is that complainant had a saving account in S.B.I. Barari Branch, Bhagalpur when he filed withdrawal slip of a sum of Rs. 1,50,000/- on 29.01.2014, he was informed that Rs. 2 lacs has been transferred from his account to S.B.I. Parbatta Branch. He was informed that in his name, two STDR of Rs. 1 lacs each has been deposited in the said Branch. The allegation is that no withdrawal slip was signed by the complainant for deposit in STDR.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner was the Branch Manager, S.B.I. Parbatta Branch at the relevant point of time and as the son of the complainant had taken loan for purchasing a bus from the said Branch but declared defaulter, so the complainant approached the Branch Manger and asked to deposit Rs. 2 lacs in S.T.D.R, in the meanwhile, he would try to get the loan to be cleared by his son and requested not to seize the bus. He signed two withdrawal slips on 25.01.2014 for fix deposit and the said amount was deposited in his S.T.D.R. account for 36 months on the same day and the said amount has already matured. It's not a case of any breach of trust, the money has not been used by the petitioner, nor it's a case of any cheating committed by the petitioner and as the loan account of the son of the complainant became non-performing asset and bus was seized, therefore, maliciously this complaint case has been filed.

5. Contrary to that, learned counsel appearing on behalf of the complainant submits that withdrawal slips were not singed by the complainant. When he enquired that how his money has been transferred from one Branch to another then bank informed him about it and even S.T.D.R. was not handed over to the complainant.

6. Having considered rival submissions and on perusal of the record, the Court finds that complainant has not followed the procedure, as laid down under Section 154(3) of the Code of Criminal

Procedure. In view of said provision, a person aggrieved by a refusal on the part of an Officer-in-charge of a Police Station to record the information of any cognizable offence, he is required to send the substance of information in writing and by post to the Superintendent of Police concerned for the purpose of investigation of the case. In the present case, no such step was taken by the complainant, instead of following the procedure, the complainant directly approached the court by filing the complaint case. It's not the allegation that money of complainant has been misappropriated or used by the petitioner rather money, at his request, was deposited in his S.T.D.R. account. It's also not in dispute that complainant's son had taken loan of Rs. 14.90 lacs from the concerned bank for purchasing a bus and his account became Non Performing Asset and bus was seized.

Section 406 of the Indian Penal Code reads as follows:

> "406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both".

But in case of any criminal breach of trust by a banker, appropriate section is 409 of the Indian Penal Code, which reads as under:

> "409. Criminal Breach of trust by public servant, or by banker, merchant or agent.- Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that

> property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

Whereas Section 405 of the Indian Penal Code, defining criminal breach of trust, reads as under:

> "405.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

7. In order to constitute an offence of criminal breach of trust, a person must be entrusted with property or his dominion over property. Secondly, if he dishonestly misappropriates or converts that property to his own use or dishonestly uses or disposes that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or any legal contract, express or implied so if he commits misappropriation or converts the entrusted property to his own use only then offence of criminal breach of trust is made out.

8. Likewise cheating is defined under Section 415 of the Indian Penal Code, which reads as under:

> 415.- Cheating- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to

> deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

9. So applying ingredients of aforesaid offence in the present facts of the case, it appears that there is no misappropriation done by the petitioner relating to money deposited by the complainant. So, the ingredient of the offence of criminal breach of trust and cheating, as alleged, under which cognizance has been taken, does not make out in this case. Learned Magistrate, without applying his judicial mind, has taken cognizance of offence in the matter in a mechanical way, so the entire criminal proceeding of Complaint Case No. 416C of 2014 inclusive of cognizance order dated 05.05.2014, pending in the court of the A.C.J.M., Khagaria is hereby quashed and set aside.

10. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.10.2017
Transmission Date	10.10.2017