IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10761 of 2012

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Janardan Singh Son of Late Deo Narayan Singh, Resident of Villaage- Naya Tola, Bajitpur- Bishunpur, P.S. Begusarai Town, District- Begusarai.

.... Petitioner

Versus

1. The State of Bihar
2. Indradeo Prasad Yadav Son of Bhuwneshwar Prasad Yadav, Resident of Mohalla- Baluahi, Ward No. 18, P.S. & District- Khagaria.

.... Opposite Parties

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Appearance :

For the Petitioner : Dr. Amrendra Kumar, Advocate
Mr. Ravi Shanker Pankaj, Advocate

For the State : Mr. Ashok Kumar (APP)
For the opp. Party no.2 : Mr. Mrityunjay Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

6 07-09-2017 This Criminal Miscellaneous has been filed for quashing the order dated 17.05.2011 passed by Sri S.D. Bharti, the then Judicial Magistrate, 1st Class, Khagaria in Complaint Case No. 1041 (C) of 2005, whereby and whereunder, the petitioner was summoned to face trial for the offences under sections 409, 477 (A) and 420 of the I.P.C.

2. Indradeo Prasad Yadav, the opposite party no.2 has filed the aforesaid complaint case, alleging therein, that the complainant had taken home loan of Rs. 1,00,000/- from the S.B.I. A.D.B. Branch on 23.06.1998 and the monthly E.M.I. was fixed Rs. 1500/- for his home loan bearing Account No. 2/2. The complainant used to deposit the amount time to time. On

27.09.2000 the then Branch Manager of the A.D.B. Branch i.e. the petitioner called him and said that if he did not want to pay the interest, deposit the amount at a time till 30.09.2000 and then the interest on the loan amount will be remitted. Thereafter, the complainant deposited Rs. 27,000/- on 29.09.2000 and Rs. 25,000/- on 10.10.2000 in Account No. 5076 in the name of Sanjay Kumar, the son of the complainant and the Branch Manager told him that the amount deposited in Account No. 5076 would be adjusted in the Home Loan Account No. 2/2, but the amount has not been adjusted in his account and the total amount of Rs. 52,000/- was misappropriated and further the petitioner threatened the complainant.

3. The complainant was examined on the solemn affirmation and further two enquiry witnesses, namely, Ranjeet Yadav and Ram Ekbal Sah have been examined and the learned Magistrate after considering the materials collected during the enquiry passed the impugned order.

4. The petitioner being aggrieved and dissatisfied with the said order has preferred this Criminal Miscellaneous challenging the legality, correctness and propriety of the same. The learned counsel for the petitioner has submitted that son of the complainant, namely, Sanjay Kumar was the account holder bearing Account No. 5076 and his younger brother Ajit Kumar was the Canteen boy of the Branch and the complainant was introducer of the aforesaid Account No. 5076. Ajit Kumar in connivance with his brother Sanjay Kumar and his father Indradeo Prasad (Opposite party no.2) committed fraud by manipulation in the account ledger of Account No. 5076 and Account No. 5189. The petitioner being the Branch Manager has filed Khagaria P.S. Case No. 319 of 2000/ G.R. No. 1073 of 2000 dated 13.10.2000 under sections 419, 420, 467, 468, 471 and 120 (B)/34 of the I.P.C wherein after completing investigation the police submitted charge sheet No. 302/2000 dated 30.12.2000 and the supplementary charge sheet No. 142 of 2001 dated 31.05.2001 against both sons of the complainant. The complainant being introducer of the account took liability of the alleged fraud committed by his sons and deposited the alleged amount of Rs. 52,000/- which is still lying in the sundry account. The present case has been filed only with a view to put pressure so that the petitioner does not be able to depose in that Khagaria P.S. Case No. 319 of 2000. In the earlier case both sons of the complainant have admitted their guilt and deposited the amount withdrawn by them fraudulently. The allegation that the complainant deposited the amount on 29.09.2000 and 10.10.2000 is similar as stated in Khagaria P.S.

Case No. 319 of 2000 and this complaint case has been filed on 27.12.2005 after delay of more than five yeas. If the impugned order will be allowed to stand as it is, it will occasion to failure of justice and as such the impugned order is fit to be quashed since it is against the settled principle of law.

5. On the other hand, the learned A.P.P. and the learned counsel for the opposite party no.2 submit that keeping the amount of the complainant in the sundry account itself reflexes the intention of the petitioner why that amount has not been deposited in the loan account. The opposite party no.2 is a poor loanee and keeping these amounts in the sundry account is itself misuse of the power. The complainant- opposite party no.2 tried his best to settle the dispute but finding no way filed the complaint case on 27.12.2005. The delay is not intentional. The complainant in his statement on the solemn affirmation and the two enquiry witnesses have supported the allegation as made out in the complaint petition and as such the learned Magistrate has passed the order correctly and therefore there is no need for any interference by this Court. The ledger book is in the custody of the Bank Manager and the sons of the complainant are not custodian of the ledger book. During trial the ledger book can be perused and as such the impugned order does not require any interference by this Court and the same is fit to be confirmed.

6. Having considered the submissions urged at the Bar, going through the record and noticing that the petitioner is the informant of Khagaria P.S. Case No. 319 of 2000 which has been lodged against Sanjay Kumar and Ajit Kumar, the two sons of the complainant wherein after completing investigation charge sheet has already been submitted under sections 419, 420, 467, 468, 471 and 120 (B)/34 of the I.P.C, the petitioner has not denied regarding deposit of the amount of Rs. 52,000/- by the complainant and that has not been misappropriated rather that is lying in the sundry account due to the reason that against the sons of the complainant criminal case bearing Khagaria P.S. Case No. 319 of 2000 was going on and the complainant being introducer of the account of his sons took liability of the alleged fraud and the deposited amount of Rs. 52,000/-, after lapse of five years the complaint case has been filed and there is no explanation for the said delay. The learned Magistrate has passed the impugned order without considering the delay which has been caused for lodging the complaint case. The amounts were deposited in the year 2000 by the complainant but in the year 2005 the complaint case has been filed when the two sons of the complainant was facing trial in Khagaria P.S. Case No. 319 of 2000. The continuation of this complaint case will be misuse of process of law and it will occasion to failure of justice.

7. In the result, the impugned order is hereby quashed and this Criminal Miscellaneous stands allowed.

(Jitendra Mohan Sharma, J)

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